



POLICY REGISTER

Compliance and Enforcement Policy Biosecurity Act 2015 and Biosecurity Regulation 2017

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BALRANALD SHIRE COUNCIL

Compliance and Enforcement Policy

Biosecurity Act 2015 and Biosecurity Regulation 2017

CONTENTS

POLICY REGISTER.....	1
BALRANALD SHIRE COUNCIL Compliance and Enforcement Policy Biosecurity Act 2015 and Biosecurity Regulation 2017	3
CONTENTS.....	3
1. BACKGROUND	8
2. INTRODUCTION	9
3. PURPOSE.....	9
4. SCOPE.....	10
Duty to prevent, eliminate or minimise biosecurity risk.....	10
Enforcement - Making sure a rule, standard, court order or policy is properly followed.....	10
5. OUTCOMES.....	10
5.1 A graduated and proportionate response	11
5.2 Proportionate response	12
5.3 Authorised by law.....	13
5.4 Impartiality and procedural fairness.....	14
5.5 Right of Appeal	14
5.6 Accountable and transparent	14

5.7	Privacy.....	15
5.8	Promote consistency of enforcement activity between regulators	15
5.9	The Public Interest.....	15
5.10	Application of multiple enforcement tools.....	15
6.	APPEALS TO COUNCILLORS.....	15
7.	RESPONDING TO COMPLAINTS	15
8.	REVIEW AND AMENDMENT	16
9.	CONCLUSION	16
10.	LEGISLATION	16
11.	OTHER RELATED DOCUMENTS.....	16
12.	REVISION HISTORY	17
	APPENDIX ONE - COMPLIANCE PROCEDURES	17
	Notice of Inspection Letter:.....	17
2.	Property Inspection Report:.....	17
	Property Inspection Reports are to be issued in the following circumstances:.....	17
3.	Compliance Request:	17
	Compliance Requests are to be issued in the following circumstances:	18
4.	Biosecurity Direction:.....	18
5.	Biosecurity Undertaking:	19

Supporting Documents:	19
NSW Government, Department of Industry, Biosecurity Undertaking Procedures	19
6. General Penalty Notice:.....	19
A 'Penalty Notice' will be issued under the following circumstances.....	19
Serving a Notice.....	20
1. Notice of Inspection Letter:	17
2. Property Inspection Report:	17
3. Compliance Request:	17
4. Biosecurity Direction:	18
5. Biosecurity Undertaking:.....	19
6. General Penalty Notice:	19

DEFINITIONS

Authorised Officer	Means a person who is appointed as an authorised officer under the Biosecurity Act 2015 to manage biosecurity risk by performing certain functions, such as investigating, monitoring and enforcing compliance with the Act.
Biosecurity Direction	Means a general biosecurity direction or an individual biosecurity direction under Part 9 of the Biosecurity Act, given by an authorised Officer, which has legal force.
Biosecurity Duty	There are several biosecurity duties imposed under the Biosecurity Act in relation to specified persons. These include: • A duty to take action when dealing with biosecurity matters or carriers, • A requirement to notify a prohibited matter event, • A requirement to prevent, eliminate or minimise a risk posed by prohibited matter and • A duty to notify an suspected or existing biosecurity event
Biosecurity Event	A biosecurity event is something that has occurred, is occurring or is likely to occur and that has, is having, or is likely to have, a significant adverse effect on the economy, environment or community.
Biosecurity Impact	A biosecurity impact is an adverse effect on the economy, environment or the community that arises, or has the potential to arise from biosecurity matter or a carrier.
Biosecurity Matter	Biosecurity matter is: • Any living thing, part of a living thing or product of a living thing (other than a human), or • A disease, prion or contaminant, or • A disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host (i.e. zoonosis).
Biosecurity Risk	A biosecurity risk is the risk of a biosecurity impact occurring.
Biosecurity Undertaking	A biosecurity undertaking is a written undertaking given by a person if the person has contravened, is suspected or is likely to contravene a requirement imposed by or under the Act.
Biosecurity Zone	A biosecurity zone is established by regulation and its purpose is to prevent, eliminate, minimise or otherwise manage a biosecurity risk or biosecurity impact. Generally a biosecurity zone will apply to a specified part, or parts of NSW.
Carrier	A carrier means anything (whether alive, dead or inanimate, and including a human) that has, or is capable of having any biosecurity matter on it, or contained in it.
Compliance	Adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards.
Dealings	Dealings is used in the context of “dealing with” biosecurity matter or carrier or to “engage in a dealing”.
Enforcement	Making sure a rule, standard, court order or policy is properly followed.
General Biosecurity Duty	The general biosecurity duty can apply to anyone. It provides that any person who deals with biosecurity matter or a carrier, and who knows (or ought

	reasonably to know) of the biosecurity risk posed (or likely to be posed), has a biosecurity duty to ensure that the risk is prevented, eliminated or minimised - so far as is reasonably practicable.
Local Control Authority	The council of a local government area is the local control authority for land within the local government area unless the weed control functions for the area have been conferred on a county council under any other Act. If the weed control functions for an area have been conferred on a county council, the county council is the local control authority for that area.
Mandatory Measure	A requirement set out in regulation for a person who deals with biosecurity matter or carriers to take specified actions to prevent, eliminate or minimise a biosecurity risk posed, or likely to be posed, by the biosecurity matter, carrier or dealing.
BSC	Balranald Shire Council.
Prohibited Matter	Prohibited matter is biosecurity matter that is listed in Schedule 2 of the Biosecurity Act 2015.
Reasonably Practicable	What is reasonably practicable means that which is reasonably able to be done, taking into account and weighing up all relevant matters including the nature of the biosecurity risk concerned, the availability and suitability of ways to manage the biosecurity risk concerned, and the cost involved.
Regulation	The Biosecurity Regulation 2017.
Tenure Neutral approach	A tenure neutral approach means that the Biosecurity Act 2015 applies equally to all land in the state, regardless of whether it is publically or privately owned
The Act	Biosecurity Act 2015.
Voluntary Compliance	Where landholders/land managers voluntarily adhere to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards.

1. BACKGROUND

The Biosecurity Act 2015 (the Act) and Biosecurity Regulation 2017 (the Regulation) came into effect on 1 July 2017, replacing 10 previous Acts, including the Noxious Weeds Act 1993, as well as repealing sections of a further 4 Acts relating to biosecurity.

The Act complements the principles of the NSW Biosecurity & Food Safety Strategy 2022 - 2030, that biosecurity is a shared responsibility between governments, industries and individuals/community, outlining the need to work together to identify, eradicate, minimise, respond and to manage biosecurity risks. The Act takes a tenure neutral approach to Biosecurity.

The broad objectives of biosecurity in NSW as outlined in the NSW Biosecurity & Food Safety Strategy 2022 – 2030 are to manage pests, disease and weed risks by:

- Prepare and prevent,
- Timely and risk proportionate responses
- Rapid and efficient containment
- Partnerships to minimize impacts

The Act and the Regulation provide the legislative framework to achieve these objectives.

Biosecurity matter is defined as any living thing, part of a living thing or product or a living thing (other than a human), or a disease, prion or contaminant, or a disease agent that can cause disease in a living thing (other than a human) or that can cause disease in a human via transmission from a non-human host (ie zoonosis).

The *Regulation* establishes biosecurity zones for the management of key biosecurity risks and specifies mandatory measures, or actions, that a person must take with respect to particular biosecurity matter or carriers. These include duties to notify of the presence or suspected presence of pests, diseases, weeds and contaminants.

It also encompasses a General Biosecurity Duty that can apply to anyone, as it provides for any person who deals with biosecurity matter or a carrier, and who knows (or ought reasonably to know) of the biosecurity risk posed (or likely to be posed), has a biosecurity duty to ensure that the risk is prevented, eliminated or minimized, so far as is reasonably practicable.

Where these measures apply to a particular dealing or activity then the relevant person must comply with these measures, regardless of whether they know or ought to know what the risks posed are or likely to be posed.

2. INTRODUCTION

This Policy governs the regulatory functions of the Balranald Shire Council (BSC), recognising the obligations placed upon the Authority by the Act and its Regulation, that the Authority may use any or all of the powers conferred upon it by the Act to prevent, eliminate, minimise and manage the biosecurity risk posed or likely to be posed by weeds in relation to the land for which it is the local control authority. In addition Section 371 of the Act also provides that as a local control authority, BSC has the following functions:

- to develop, implement, co-ordinate and review weed control programs,
- to inspect land in connection with its weed control functions,
- to keep records about the exercise of the local control authority's functions under the Act.

This policy explains how BSC will conduct its regulatory functions to achieve compliance with the Act and to drive continual improvement.

Compliance - Adhering to the requirements of laws, industry and organisational standards and codes, principles of good governance and accepted community and ethical standards

The Policy guides the most efficient and effective use of BSC's resources to achieve the best outcomes for the Authority and stakeholders.

3. PURPOSE

The enforcement policy purpose is to:

- outline BSC's general approach to compliance and enforcement.
- explains how BSC undertakes activities that reduce biosecurity risks relating to weeds and enhance compliance with established standards.
- explains how BSC will conduct their activities to protect the economy, environment and community from negative impacts associated with weeds.
- assists with decision-making to ensure that enforcement actions are consistent, fair, and based on best practice.

The aim of this policy is to:

- promote compliance with New South Wales legislative provisions consistent with the objects of the Act(s).
- promote transparency to stakeholders on how BSC will make decisions on enforcement action.
- guide decision making and action by staff in the use of enforcement options.
- encourage use of regulatory tools in such a way as to best achieve BSC's organisational objectives.
- have a risk-based approach to compliance and enforcement activities through adoption of a graduated and proportionate response to non-compliance.

- have a cooperative and collaborative approach with stakeholders or between jurisdictions to legislative compliance and one that does not place unnecessary impost on stakeholders in BSC's area.
- protect stakeholders from inappropriate and/or misleading trade practices.

4. SCOPE

This Policy outlines BSC's approach to compliance and enforcement, and explains how BSC will conduct its regulatory functions to drive continual improvement.

The policy sets out the principles adopted by the BSC to achieve compliance with the law, and outlines the regulator's functions, priorities, strategies and regime.

Duty to prevent, eliminate or minimise biosecurity risk

A duty imposed on a person to prevent, eliminate or minimise a biosecurity risk so far as is reasonably practicable is a duty:

- (a) to prevent or eliminate a biosecurity risk so far as reasonably practicable, and
- (b) if it is not reasonably practicable to prevent or eliminate the biosecurity risk, to minimise the biosecurity risk as far as reasonably practicable.

Enforcement - Making sure a rule, standard, court order or policy is properly followed

BSC is a single purpose Council for the administration of legislation that protects and manages biosecurity risks relating to weeds for its Local Government Area. BSC has built partnerships with landholders and the community to encourage greater understanding of biosecurity weed risks, practices and support for innovation.

To build a culture of voluntary compliance and enable landholders and the community to take responsibility for ensuring their activities do not cause unlawful harm, enforcement action is sometimes necessary.

Enforcement action provides a strong deterrent to non-compliance. The effective protection of biosecurity weed risks, as well as good regulatory practice, requires BSC to have clear strategies governing the undertaking of enforcement action.

This Enforcement Policy complements BSC's *Annual Operational Plan*, and other documents which set out BSC's approach to its enforcement activities.

It is the goal of the BSC's enforcement activities to:

- achieve outcomes consistent with legislation.
deter non-compliant behavior.
- assertively apply consistent and proportionate enforcement action.

5. OUTCOMES

This Policy sets out the guiding principles BSC will apply when conducting regulatory and enforcement activities and includes an approach that is:

- graduated and proportionate.
- authorised by law.
- impartial and procedurally fair.
- accountable and transparent.
- consistent in terms of the enforcement response between regulators.
- in the public interest.
- allows for application of multiple enforcement tools under appropriate circumstances.

5.1 A graduated and proportionate response

BSC will apply a graduated and proportionate approach to the application of enforcement tools upon stakeholders. This involves the application of mild enforcement tools to offenders in the first instance; to be followed by more severe tools should the non-compliant activity continue.

Mild enforcement tools that may be employed include provision of educational information, the issuing of a voluntary compliance request following a property inspection or warning letters.

More severe tools include the entering into a biosecurity undertaking, issuing of a biosecurity direction, issuing penalty notices, or prosecution.

BSC may at times consider mediation and conciliation as preliminary steps in enforcement processes. Mediation and conciliation provides the landholder or affected party the opportunity to explain mitigating circumstances of the non-compliance. Following this explanation, BSC may make a determination on an appropriate course of action.

5.2 Proportionate response

BSC will select an enforcement response that is proportionate to the identified noncompliance and capable of providing sufficient incentive to the landholder or affected person to amend the non-compliant behaviour.

Should the circumstances surrounding an offence be considered sufficiently serious (e.g. an imminent risk to the Region and/ or State biosecurity status or public health and safety), BSC may elect to employ multiple enforcement tools at the same time.

This policy should not be interpreted as a means of preventing BSC from exercising any such enforcement powers.

BSC will consider the following factors when making decisions concerning the choice of enforcement tool:

- circumstances of the alleged offence and the individual circumstances of the offender associated with the property.
- compliance history of the offender, in general and with respect to the specific occurrence.
- co-operation demonstrated by the alleged offender.
- remedial action implemented by the alleged offender to address the non-compliance.
- timeframe over which the offence was committed.
- the need to provide BSC staff with a safe working environment within the requirements of work health and safety laws, particularly in relation to matters involving assaults and intimidation.

The following diagram illustrates the graduated nature of enforcement responses in accord with the seriousness of the non-compliance.

Diagram 1. Enforcement response

					Prosecution
Certain				Penalty Notice	
Likely			Biosecurity Direction		
Possible					
Unlikely		Biosecurity Undertaking			
Low	Authorised Officer Powers	Compliance Request			
	Education				
	Low	Minor	Moderate	Major	Severe
	BIOSECURITY RISK				

5.3 Authorised by law

Authorised officers are required to act within their legal remit of statutory power when undertaking enforcement activity. People or landholders should not be required, either directly or by inference, to observe requirements that are not authorised by law.

When collecting evidence:

- any evidence obtained by authorised officers relating to actual or alleged offence should be obtained within the requirements of legislation and criminal law.
- all decisions should be based on evidence. Enforcement action is to be supported by appropriate evidence. Evidence should be admissible and sufficient to establish that an offence has been committed (this will assist in ensuring that enforcement action is only taken under appropriate circumstances).
- it should be sufficient to support a case against appeal.
- it does not need to be assembled into a full prosecution brief for minor enforcement action, however evidence should be sufficient to substantiate the offence.

5.4 Impartiality and procedural fairness

BSC will undertake enforcement activity against the landholder or affected person in a timely manner that is procedurally fair and impartial. This will assist in minimising opportunities for arbitrary or inexplicable differences between the handling of individual cases, or classes of cases, to occur.

Discrimination (e.g. with regard to ethnicity, religion, age or gender) by authorised officers when undertaking enforcement action is unacceptable.

Decision making about applying enforcement provisions should not be influenced by:

- political advantage or disadvantage to a government or any political party or group.
- the consequences of a decision on the personal or professional circumstances of staff.
- the personal feelings of the decision makers towards the offenders.

5.5 Right of Appeal

Landholders and/or affected persons involved will receive written advice of available statutory rights of appeal when decisions are made by BSC to apply enforcement provisions.

Reasons for a decision will be documented and included in a statement of reasons as part of any administrative review of the decision.

5.6 Accountable and transparent

To ensure that BSC is accountable and transparent in the application of enforcement tools the authorised officers will:

- ensure that legislation, enforcement policies, complaints procedures and relevant information are readily accessible to landholders and the public.
- use plain language to communicate with the public and the industry.
- ensure that policies and procedures addressing issues associated with enforcement action are readily available.
- advise of available complaint or appeal processes associated with enforcement action inclusive of timeframes applicable to these processes.
- provide advice on fees and charges that may be applied in discharging enforcement obligations or providing services under the relevant legislation.

In relation to issuing penalty notices, BSC has adopted guidance from two documents, which can be found on the NSW Justice website at www.justice.nsw.gov.au:

- Caution Guidelines and;
- Internal Review Guidelines

5.7 Privacy

The constraints of any privacy legislation and confidentiality provisions when initiating enforcement action against landholders (unless a statutory requirement exists to disclose the information) will be observed.

5.8 Promote consistency of enforcement activity between regulators

BSC will work with other state and territory jurisdictions to promote consistency in the application of enforcement provisions by regulators. This ensures stakeholders in different local control authority jurisdictions do not receive differential treatment with respect to measuring compliance with legislative obligations.

5.9 The Public Interest

The overriding consideration in taking enforcement action should always be the protection of the community, plant and animal health and safety.

5.10 Application of multiple enforcement tools

A graduated approach to the application of individual enforcement tools does not preclude the simultaneous application of multiple enforcement tools.

There may be circumstances where there are multiple non-compliances detected, each of varying significance. In such circumstances, the use of different enforcement tools may also be warranted.

6. APPEALS TO COUNCILLORS

A Councillor who is contacted by a person affected by an enforcement action should refer the matter to the General Manager for attention.

7. RESPONDING TO COMPLAINTS

Every effort will be made to ensure that complaints lodged with the Authority are dealt with on a priority basis having regard to the relative seriousness of the matter. Response times may vary depending on the staff and other resources available, however, the Authority will acknowledge the complaint and inform the complainant of the outcome.

8. REVIEW AND AMENDMENT

- a) This policy will be reviewed annually, to ensure it meets all statutory requirements and needs of this Authority.
- b) This policy may be amended by the Authority at any time without prior notice or obligation.

9. CONCLUSION

This policy formalises in one document the processes and decision pathway that has proven to be functional and of benefit in the community which this Authority serves.

The basis of its development, adoption and use is that it will clarify the processes used by BSC for compliance and enforcement purposes for every person associated with weed control issues in the area, for which it is the local control authority, in a positive fashion and act as a reference for the broader community.

Implementation of the policy will play a part in protecting the local economy, the environment and community from the negative impacts associated with weeds, as well as enhancing the social and agricultural sustainability / values of the New England region.

The commitment to its review will ensure that it meets contemporary needs and addresses changes in the future.

10. LEGISLATION

BSC is responsible for administering and/or enforcing the following Acts and Regulations:

- Local Government Act 1993 and Regulations thereunder.
- *Pesticides Act 1999 and Regulations thereunder.*
- *Agricultural and Veterinary Chemicals (New South Wales) Act 1994.*
- *Biosecurity Act 2015 and Regulation thereunder.*

11. OTHER RELATED DOCUMENTS

- BSC Strategic Plan
- BSC 4 Year Delivery Plan
- BSC Annual Operational Plan

12. REVISION HISTORY

APPENDIX ONE - COMPLIANCE PROCEDURES

Notice of Inspection Letter:

This letter advises landowners of the Authority's intention to carry out property inspections in a designated area in accordance with its responsibilities under the Biosecurity Act, 2015.

The form advises a landowner of the intended timeframe for the inspection to be carried out as well as the Authorised Officers name and contact details. They can be either utilised as a mail out or as a letterbox drop as the need arises.

The **Notice of Inspection Letter** is to be used to make initial contact with landowners in the designated area of yearly inspections. Once contact has been initiated follow up inspections will not require the re issue of the letter

NOTE: As part of the Authority's inspection procedures inspections are not to commence before talking to the landowners as part of their farm Biosecurity Plans and to maintain a good working relationship.

2. Property Inspection Report:

A less threatening form of communication with clients which has a multi-purpose function and is generated through Intra maps.

Property Inspection Reports are to be issued in the following circumstances:

- To advise landowners of the status of a property following an inspection.
- Following a request from a landowner after an inspection has been carried out.
- To make contact with a landowner where personal contact cannot be made after an inspection has been carried out.

Property inspection reports are to be signed by the Biosecurity Officer who completed the inspection and include contact details.

3. Compliance Request:

The standard Compliance Request outlines the landowners General Biosecurity Duty in regards to a Priority weed. It is to be used to inform/remind owners/occupiers of their weed control obligations and include specific directions for their control when it is considered a weed control program will not be carried out or not to a satisfactory standard.

To be signed by the Authorised Officer who carried out the inspection and must include contact details.

The Compliance request is to include a copy of the Regional Weed Control Management Plan that outlines recommended control measures, legal obligations and identification

characteristics for the Priority Weed of concern.

Compliance Requests are to be issued in the following circumstances:

- Following an inspection, to inform landholders of any weeds related matters requiring their attention, and to advise them of their responsibilities.
- To address a weed situation, regardless of size or severity.
- To encourage landholders to raise control standards to higher levels than those currently being implemented.
- To support verbal agreements in a tangible form as a verbal Biosecurity Undertaking.
- As a means of assigning weed control priorities, e.g. boundary areas which would effect neighbouring properties.
- As a follow-up on previously issued Compliance Reports, or any variation on a previously agreed program.
- To advise that a Biosecurity Direction or a General Penalty Notice could be issued at a later date in the event of non-compliance.

4. Biosecurity Direction:

A Biosecurity Direction may be issued by an Authorised Officer to ensure a landowner discharges their General Biosecurity Duty and is the commencement of the formal prosecution process.

There are two types of Biosecurity Directions identified in section 124 of the Act. A General Biosecurity Direction and an Individual Biosecurity Direction and

- A Biosecurity Direction is to be issued when after a landholder has failed to comply with a Compliance Request and all other avenues to resolve the weed issues has failed.
- A General Biosecurity Direction cannot be issued without authorisation from the Senior Biosecurity Officer and the General Manager.
- Sufficient evidence must be provided before a Biosecurity Direction will be issued. Authorised Officers must prepare a case study of the offence with assistance of the Senior Biosecurity Officer in the Investigations/Prosecutions file.
- Evidence must contain the following:
 - Property Details
 - Landowner Details
 - Notification Forms Prior
 - Compliance Requests.
- Authorised Officers must provide detailed records of dates, times of property inspections, conversations, phone calls and all activities associated with the investigation process in case legal proceedings are commenced.
- The General Manager has the right to not approve a Biosecurity Direction if there is not sufficient evidence in the event that legal action may be undertaken.
- Failure to comply with a Biosecurity Direction is a Category 2 Offence.
- A charge may apply to subsequent inspections for failure to comply with a Biosecurity Direction as per the Authority's fees and charges or as directed by the General Manager.

A Biosecurity Direction may be marked a compliant if the landowner has complied with the Biosecurity Direction or may be revoked or varied as the need arises.

Supporting Documents:

NSW Government, Department of Industry, Biosecurity Directions Procedures

5. Biosecurity Undertaking:

An Authorised Officer may accept a Biosecurity Undertaking from a person who advises they will take appropriate action to discharge their General Biosecurity Duty instead of giving the person a Biosecurity Direction.

- A Biosecurity undertaking must specify the contravention or the suspected likely contravention, the measures or actions the person has agreed to implement and the time period by which these are to be implemented.
- A Biosecurity Undertaking will only take effect and is enforceable when the undertaking is signed by the Senior Biosecurity Officer who accepts the undertaking and the person giving the undertaking.
- Failure to comply with a Biosecurity Undertaking is a Category 2 Offence.
- An Authorised Officer may refuse to accept a Biosecurity Undertaking from a person if they believe the actions will be insufficient to mitigate, manage or prevent the Biosecurity risk.
- The General Manager must approve the Biosecurity Undertaking before it can be accepted.
- A charge may apply to subsequent inspections for failure to comply with a Biosecurity Undertaking or for the preparation of an Biosecurity Undertaking as per the Authority's fees and charges or as directed by the General Manager.

A Biosecurity Undertaking may be withdrawn if the landowner has complied with the Biosecurity Undertaking or may be varied as the need arises.

Supporting Documents:

NSW Government, Department of Industry, Biosecurity Undertaking Procedures

6. General Penalty Notice:

An Authorised officer may serve a Penalty Notice if it appears to the Authorised Officer that the person has committed an offence against the Act or the regulations being an offence prescribed by the regulations as a Penalty Notice Offence.

A 'Penalty Notice' will be issued under the following circumstances.

- When the requirements of a Biosecurity Direction have not been complied with.

- The person has not complied with a Biosecurity Control Order as published in a Government Gazette.
- A person may chose to pay the Penalty Notice or have the matter heard in court.
- A Penalty cannot be issued without authorisation from the Senior Biosecurity Officer and the General Manager.
- A Penalty Notice can only be issued by an Authorised Officer.
- Sufficient evidence must be provided before a Penalty Notice will be issued. Authorised Officers must prepare a case study of the offence with assistance of the Senior Biosecurity Officer in the Investigations/Prosecutions file.
- Evidence must contain the following:
 - Property Details
 - Landowner Details Notification
 - Forms Prior Compliance
 - Requests.
- Authorised Officers must provide detailed records of dates, times of property inspections, conversations, phone calls and all activities associated with the investigation process in case legal proceedings are commenced.
- The General Manager has the right to not approve a Penalty Notice if there is not sufficient evidence in the event that legal action may be undertaken.

Serving a Notice

- Part A of the penalty Notice is sent to the State Debt Recovery Office.
- Part B remains in the Penalty Notice Handbook.
- Part C of the Penalty Notice is served to the person.
- A Penalty Notice may be served personally or by post.