

Publication Criteria for Penalty Notices

Introduction

All penalty notices issued by the NSW Food Authority and appointed enforcement agencies will be assessed against a publication matrix and outcome decision tree.

This matrix takes into account the priority classification of the business involved as well as the severity and the type of offence or alleged offence.

Purpose of assessment

The purpose of the assessment is to ensure that penalty notices relating to minor offences or alleged offences (such as the presence of a single cracked tile) or administrative in nature (such as not properly displaying a licence) and which are not deemed to have an impact on public health or safety are not published in accordance with the Government's decision in relation to publication of penalty notices.

Assessment process

The initial assessment will be undertaken by a dedicated officer within the NSW Food Authority's Local Government Unit.

The dedicated officer, who is suitably skilled, trained and supported to carry out penalty notice assessments, is tasked with feeding each individual penalty notice through the matrix. In addition, each penalty notice which is classed as "not for publication" by virtue of the matrix, will be assessed against the outcome decision tree.

Incomplete assessments

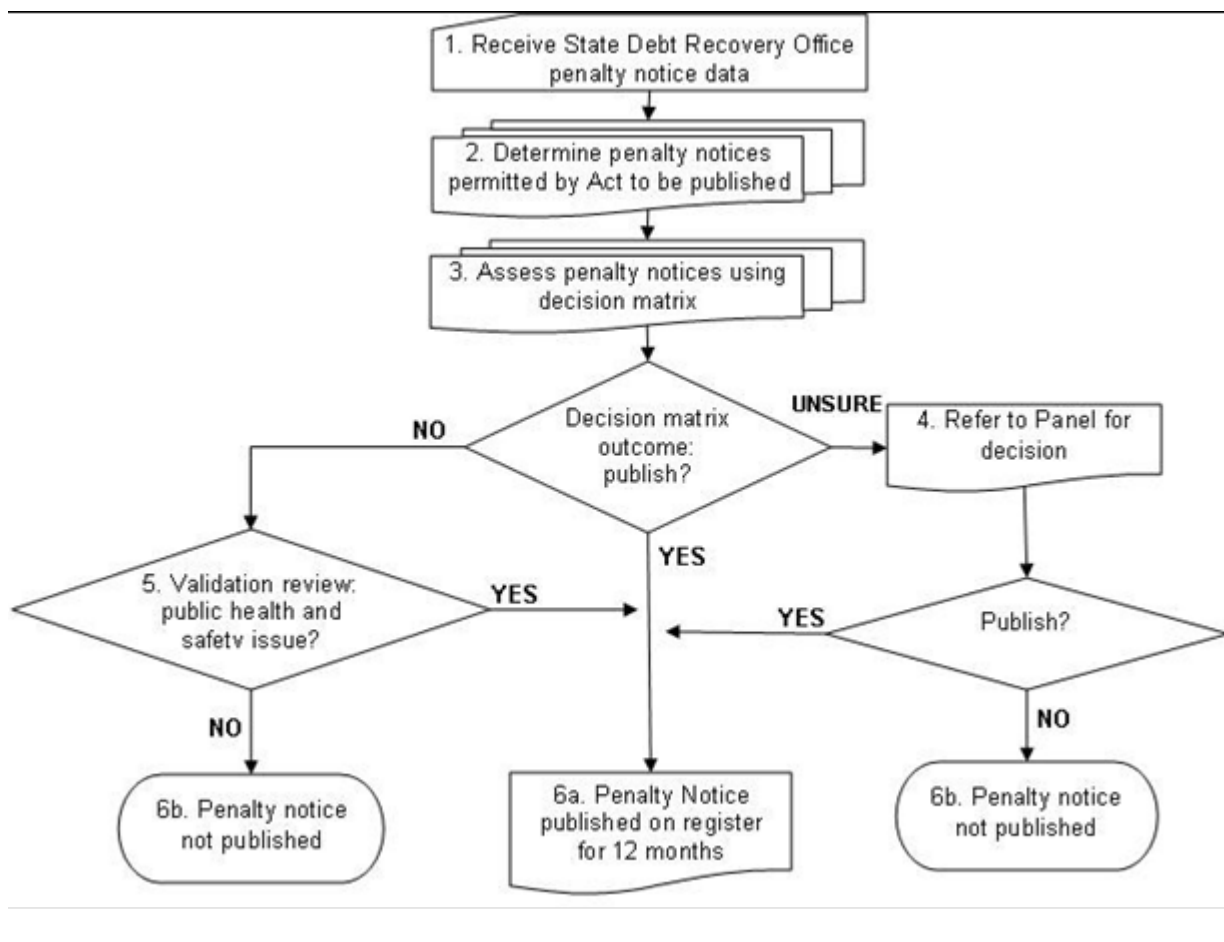
For penalty notices containing insufficient information to allow the dedicated officer to undertake the assessment, the dedicated officer will contact the issuing authority and/or officer to obtain additional information allowing assessment.

Should the dedicated officer be unable to determine whether or not the penalty notice should be published, the penalty notice will be referred to a panel for a decision.

The panel will consist of:

- Manager, Enforcement Unit
- Manager, Local Government Unit
- Independent Officer

Assessment flow chart



Matrix

		PRIORITY CLASSIFICATION			
		P1	P2	P3	P4
SEVERITY	A	YES	YES	YES	YES
	B	YES	YES	YES	NO
	C	NO	NO	NO	NO

Matrix parameters

The matrix has two parameters which weigh up both the priority classification of a business and the severity of the offence or alleged offence. For instance, a penalty notice issued for a type A offence or alleged offence will always be published, regardless of the priority classification of the business involved.

Priority classification

The priority classification of a food business is based on the national risk profiling framework (RPF), which prioritises regulatory effort based on risk (Business sector food safety risk priority classification framework). The RPF provides guidance on the allocation of Australian food business sectors into categories based on their likelihood of contributing to food borne disease and the potential magnitude of that contribution. The use of the RPF is required to be transparent, scientific and evidence based. The RPF consists of a series of decision trees, with extensive documentation to assist in its correct application, and leads to the classification of each business into one of four risk categories, or priority classifications. Priority 1 being businesses requiring more stringent food safety management measures and priority 4 businesses needing less measures to ensure a safe food outcome.

Severity of offence or alleged offence

The other matrix parameter is the severity of the offence or alleged offence. During audits and inspections, offences or alleged offences under the Act or Regulations are rated in accordance with their likelihood to impact adversely on public health and enforcement action is taken as appropriate and as detailed in the Compliance and Enforcement Policy.

For the purpose of the assessment of penalty notices for publication, offences or alleged offences are classified as A, B or C type offences or alleged offences.

Type C offences or alleged offences are failures to comply with the requirements of the Food Standards Code, Food Regulation or Food Act which are unlikely to result in the production of unsafe, unsuitable or inaccurately labelled food. In most cases these will be administrative in nature.

Type B offences or alleged offences are failures to comply with the requirements of the Food Standards Code, Food Regulation or Food Act which are likely to result in the production of unsafe, unsuitable or inaccurately labelled food. These offences or alleged offences are unlikely to be administrative in nature.

Type A offences or alleged offences are failures to comply with the requirements of the Food Standards Code, Food Regulation or Food Act which are very likely to result in, or have resulted in, the production of unsafe, unsuitable or inaccurately labelled food. These offences or alleged offences will not be administrative in nature. Failure to comply with previous enforcement action requests also fall within this category.

Applying the matrix

Penalty notices issued for offences or alleged offences assessed as type C would not be published. Penalty notices for offences or alleged offences assessed as type B would only be published when the food business involved has a priority classification of P1, P2 or P3. Penalty notices issued for offences or alleged offences assessed as type A would always be published.

In the event that a business or person has been issued with more than one penalty notice, the penalty notices will be assessed on an individual basis.

Decision tree

All penalty notices which are assessed as “not for publication” by virtue of the matrix are reviewed once more to identify those penalty notices that may relate to issues that could impact on public health and safety. This provides a process step to ensure that any notices that might have been filtered out by the matrix but which do relate to public health and safety issues are ultimately published, in accordance with the Government’s commitment to do so.

More information

Email food.contact@dpi.nsw.gov.au

Phone 1300 552 406

The NSW Food Authority is the regulator and source of truth for food safety in NSW, underpinned by science in an evidence-based approach from paddock to plate.

Note: This information is a general summary and cannot cover all situations. Food businesses are required to comply with all provisions of the Food Standards Code and the Food Act 2003 (NSW).

SEPTEMBER 2022
FI390/2209