



NSW RURAL FIRE SERVICE



## MANAGING VOLUNTEER DISCIPLINE

### **GUIDANCE AND TECHNIQUES ON THE PRACTICAL MANAGEMENT OF VOLUNTEER DISCIPLINE**

## Document control

### Release history

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Conducting a Volunteer Discipline Investigation	

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## 1 Foreword

The NSW RFS expects all members to undertake their duties and behave professionally, in line with our values and the Code of Conduct and Ethics.

It is also recognised that there will be occasions where the actions, conduct or behaviour of volunteer members may result in a complaint or allegation of a breach of discipline being made.

Not every complaint about a volunteer member will warrant disciplinary action. Similarly, a breach of discipline is not the same as an interpersonal conflict or grievance between members or concerns about a member's capabilities or how they perform their duties.

The purpose of Service Standard 1.1.2 Discipline is to ensure that where problems do arise, there are clear, fair and effective processes in place for Next in Charge roles to assess and appropriately manage complaints and where relevant, any consequent disciplinary action.

Service Standard 1.1.2 also provides a volunteer member who is the subject of a complaint/allegation of a breach of discipline (**the respondent**) with a clear understanding of the processes involved.

This guide describes each step in the discipline process including the procedure for:

- › a person (**the complainant**) wishing to make an allegation of a breach of discipline against a volunteer member
- › the initial assessment of an allegation to determine if it should be managed as a discipline matter or in some other way
- › preparing terms of reference for an investigation
- › selecting a person to conduct the investigation
- › investigating an allegation
- › establishing a Local Disciplinary Panel
- › conducting a disciplinary hearing
- › dealing with frivolous or vexatious complaints

It also includes guidelines for Captains and others in the Next in Charge roles to follow, where the initial assessment of the allegation finds that:

- a. the matter involves a child protection issue
- b. the matter relates to fraud
- c. the matter should be treated as a Public Interest Disclosure (PID)
- d. the conduct of the respondent involved a minor breach of discipline or issues of capability or performance of duty that are more properly addressed by way of local management action

The '*Conducting a Volunteer Investigation*' guide provides information and practical tips for persons conducting the investigation in planning the investigation, gathering material, conducting interviews, assessing and analysing the material gathered, making findings and preparing investigation reports.

## 2 Key symbols

Symbols have been used to highlight important information.



### **Action**

This is something you need to do in the management and conducting of an investigation or preparation of an investigation report.

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### **Caution**

This indicates that caution is needed when dealing with an issue and describes the risk.

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### **Communication**

This indicates that communication is required and describes the type.

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### **Safeguard**

This identifies a safeguard provision. Safeguards are important in the preservation of procedural fairness and natural justice.

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### 3 Glossary

**Appeal** where a decision by an Appropriate Disciplinary Authority to impose disciplinary action on a volunteer member is reviewed by the Commissioner (or their delegate) and either accepted, modified or rejected.

**Appropriate Disciplinary Authority** is the person or persons defined in the Rural Fires Regulation, who may conduct disciplinary hearings and take disciplinary action against volunteer members.

**Appointing officer** is the person responsible for receiving the allegation and managing the discipline process in accordance with the relevant service standard. (e.g District Manager)

**Balance of probabilities** is the weighing up or comparison of competing possibilities. A fact or event is proved to be true on the balance of probabilities if its existence is 'more probable than not' or 'more likely than not'.

**Breach of discipline** consists of any action, conduct or behaviour by a volunteer member which breaches the Rural Fires Act or Regulation, the NSW RFS Code of Conduct and Ethics or other NSW RFS Service Standards, or which demonstrates that the volunteer member concerned has been negligent, careless, inefficient or incompetent in the discharge of their duties. Detailed examples of what constitutes a breach of discipline are included in *Appendix 1*.

**Next in Charge role** includes the roles of Brigade Captain, Deputy Group Captain, Group Captain, District Manager or Regional Manager.

**Disciplinary action** means any of the penalties detailed in Clause 9 (3) of the Rural Fires Regulation 2013, namely: reprimand, suspension or recommendation to demote the member, disqualify the member from holding rank, remove the member's name from the brigade register, or impose other condition upon membership.

**Disciplinary hearing** is a formal meeting where the facts about a volunteer member's actions, conduct or behaviour are presented to the Appropriate Disciplinary Authority, in order for them to decide:

- a. if the allegations have been substantiated
- b. if disciplinary action is appropriate; and
- c. the disciplinary action that should be taken.

**Local Disciplinary Panel** is a panel of volunteer members appointed by a district manager (after consultation with the District Senior Management team or the brigades in the district) for a period of two (2) years to conduct disciplinary hearings into the actions, conduct and behaviour of volunteer members.

**False complaint/allegation** is one which is deliberately untrue.

**Frivolous complaint/allegation** is one which does not have any serious purpose or value.

**Initial assessment** is the process performed by the next in charge role who receives the complaint in order to establish the details and seriousness of the complaint/allegation and the most appropriate action for managing the complaint.

**Investigation** is a systematic process of collecting relevant facts/information/evidence; followed by an assessment of the material gathered; followed by the logical and reasonable making of findings. An investigation is **not** a trial or a passive process of complaint vs response.

**Investigation report** is the report of the person assigned to investigate the complaint/allegation. The investigation report incorporates the details of the complaint/allegation made, the investigation process

undertaken by the investigation, the information gathered during the course of the investigation and the investigator's findings with respect to the complaint/allegation. The investigation report may also contain recommendations.

**Investigator** is the person selected by the to gather all the relevant evidence or information with respect to the complaint/allegation and then use this to make findings of fact. An investigator is not on the side of the person making the complaint or the volunteer member concerned, but an impartial fact-gatherer. At the end of the process the investigator must, in an independent and objective way, assess the information, make findings, (and where directed make recommendations) and prepare an investigation report for consideration by the Appropriate Disciplinary Authority.

**Public Interest Disclosure (PID)** is a report made by a public official (including any member of the NSW RFS) that relates to serious wrongdoing which is a matter of public interest involving:

- a. corrupt conduct;
- b. maladministration;
- c. serious and substantial waste of public money;
- d. government information contravention; and
- e. is reported to a disclosures officer (eg Regional Manager , Director Regional Services)

**Procedural fairness** concerns the fairness and transparency of the processes by which decisions are made. In the context of this Service Standard procedural fairness requires that:

- a. Before any decision is made which may negatively impact a volunteer member, they must be provided with as much detail as possible about the complaint/allegations against them, the basis of those allegations, and be afforded an opportunity to respond.
- b. Decisions by the Appropriate Disciplinary Authority must be based on logical evidence, recommended on the balance of probabilities by an impartial/unbiased investigator.
- c. Where an Appropriate Disciplinary Authority is considering taking disciplinary action the volunteer member concerned must be provided with a subsequent opportunity to make submissions in relation to the proposed disciplinary action.
- d. Decision makers (eg Appropriate Disciplinary Authority) must be unbiased in relation to the matter to be decided.

**NSW RFS Activity** is whenever a volunteer member is

- a. acting in their NSW RFS capacity;
- b. preparing for and participating in deployment, field trips, maintenance activities etc.;
- c. on NSW RFS premises, including in cars, trucks and when on location;
- d. in NSW RFS Uniform, whether on duty or otherwise;
- e. supervising work experience students
- f. giving talks or presentations or being involved in an 'open day' at pre-schools, kindergartens, schools, TAFEs or universities
- g. being involved in a community event at a community, public or commercial venue or location, eg community hall, registered club, parks, sporting oval etc.
- h. being involved in NSW RFS fundraising activities on commercial premises or at a community or public venue or location, eg community hall, parks, sporting oval etc.
- i. being involved in a field day, local show or festival.

**Respondent** is the person who is the subject of the complaint/allegation of a breach of discipline.

**Terms of reference** are the set of instructions that lay out for the person appointed to conduct the investigation:

- a. the nature of the allegations
- b. the purpose of the investigation (eg to ascertain whether there is evidence to support the allegation)
- c. the authority and obligations of the investigator
- d. the timeframes for the investigation

- e. if there are any constraints to the investigation
- f. the function of the investigation report (eg to provide detailed findings and recommendations), and
- g. the recipient of the investigation report.

The terms of reference act as a clear guide to the investigator, the person making the complaint/allegation and the volunteer member concerned about what is/is not to be investigated.

**Vexatious complaints/allegations** are those that are deliberately false or misleading or instituted without sufficient grounds and serving only to cause annoyance or form a collateral purpose.



## 4 The allegation

Any complaint or allegation made against a member must be treated seriously but it must also be genuine. Caution must be exercised by a manager when an allegation is made to ensure that it is not false, vexatious or frivolous in nature. Making a false, vexatious or frivolous allegation can in itself constitute a breach of discipline.

Managers must also exercise discretion in deciding what Service Standard to use when dealing with an allegation about a member. In exercising their discretion the following factors must be taken into account:

- › the seriousness, or otherwise of the conduct alleged to have occurred
- › the health and safety of both the person making the allegation (the complainant) and the member who is the subject of the allegation (respondent)
- › the impact the alleged conduct has had or may have on the operations of the brigade, district or region, or the reputation of the NSW RFS
- › whether the person making allegation has tried other mechanisms (eg Service Standard 1.1.3 Grievances) to resolve the issue/problem with the member who is the subject of the allegation.

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### Action



Any allegation made against a volunteer member must be initially assessed by the district or regional manager who has received the allegation as soon as possible, typically within 48 hours of the allegation being made (see section 6 Initial assessment).

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### Caution

Some allegations must be dealt with in accordance with specific procedures:

- i. An allegation that involves a child or young person less than 18 years of age must be treated with the utmost urgency and immediately referred to the Professional Standards Unit (PSU) and your Regional Manager.
- ii. Any allegation that may involve corrupt conduct must be managed in accordance with Service Standard 1.1.29 Reporting of Corruption Issues.
- iii. An allegation that may involve criminal conduct must be reported to the relevant Regional Manager or to the Director Regional Services within three working days. The Director Regional Services (or the Professional Standards Unit) will liaise with the NSW Police Force to determine if an internal investigation allegation can proceed or whether it must be deferred until the NSW Police Force has completed its investigation or enquiries.
- iv. An allegation that has been made as a Public Interest Disclosure (PID) must be managed in accordance with Service Standard 1.1.30 Public Interest Disclosures.



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## 5 Receiving a complaint/allegation

An allegation of a breach of discipline against a volunteer member should be made to either a district manager or a regional manager. An allegation can also be made to a member's next in charge who must then refer it to their respective District, Regional Manager, Director Regional Services or the Professional Standards Unit.

The allegation must be in writing. An allegation may be made by email.

Where an allegation is made verbally the member receiving the allegation should ask the person if they are willing to submit the allegation in writing. If the person making the allegation is unable to submit a written allegation, the member receiving the allegation must make sure they obtain sufficient details from the person so the allegation can be appropriately assessed. As soon as possible the complainant should be asked to confirm the details of the complaint as recorded by the District or Regional Manager.

## 6 Initial assessment

The initial assessment of an allegation by a District or Regional Manager is **not an investigation**. It is about gathering sufficient information to:

- › identify the basic facts of the allegation, i.e. who, what, when, where
- › assess the seriousness, or otherwise of the alleged conduct, including considering whether the allegation may involve a child or young person, potentially corrupt conduct or a criminal offence.
- › determine whether the allegation should be managed as a breach of discipline or in some other manner.
- › determine whether the allegation meets the criteria to be considered as a PID and if so discussing with the person who made the allegation whether they wish to have the matter dealt with in that way. If a PID is suspected you are to speak to your Regional Manager Immediately.
- › determine whether, having regards to the nature of the allegation, the volunteer member should be stood down in accordance with Service Standard 1.1.21.

The initial assessment of an allegation does not, and should not, be seen as determining whether or not the conduct actually occurred as alleged, or if the allegation was in fact incorrect.



### Action

A step by step process to conducting an initial assessment is included as *Appendix 1*.

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### Caution

The respondent should not be informed of the allegation during the initial assessment stage in order to avoid any unnecessary stress.

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In undertaking the initial assessment, you may contact the person making the allegation (if required) to clarify and check details, discuss potential PID status if relevant and to establish if any other member witnessed the alleged conduct and whether there is any relevant supporting documentation.



### Action

Where the decision has been made to manage the allegation in accordance with Service Standard 1.1.2 Discipline the manager must notify their Next in Charge that an investigation is required.

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## 7 Minimising risks to persons involved

Any action taken to minimise the risks to persons involved is done so in the context of managing their immediate welfare, and **does not and should not** indicate that any findings or decisions regarding the allegation has been made.



### Safeguard

At all stages throughout the discipline process **all** parties to the matter should be reminded and afforded the contact details and brochures on the NSW RFS CISS program availability.

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At all stages through the discipline process the person who raised the allegation and the member against whom the allegation has been made should be kept informed of progress.

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## 8 Maintaining confidentiality

District and regional managers must take all reasonable steps to maintain the confidentiality of the identities of the person or persons involved, including the person/s making the allegation, the volunteer member who is the subject of the allegation and any witnesses.

However no guarantees of confidentiality should be given to any party because the identity of those people who are involved in, or witnessed, the alleged conduct may need to be revealed to the volunteer member who is the subject of the allegation in order to enable the effective investigation of the matter and to afford procedural fairness.

## 9 Selecting an investigator

Where the initial assessment has determined that the matter should be managed in accordance with Service Standard 1.1.2 Discipline the matter must be investigated.

The person selected to conduct the investigation must:

- › understand the investigation process and be provided a copy of the 'Conducting a Volunteer Discipline Investigation' guide.
- › have no direct involvement with the matter the subject of the investigation. They must not be the person who made the allegation, a witness or otherwise involved in the matter. They must not be, or be perceived to be, biased because of some actual or perceived personal interest in the matter by reason of personal involvement, business association or friendship with the volunteer member who is the subject of the allegation or anyone else who is involved.
- › be impartial, thorough and able to apply procedural fairness.

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### Caution

In determining the most appropriate person to investigate the complaint/allegation, consideration should be given to the following:



- › the nature and seriousness of the alleged conduct
- › the rank of the volunteer member who is the subject of the allegation
- › the skills and experience required to undertake the investigation
- › the resources required during the investigation
- › any specialist knowledge which may be required.
- › any perceived or actual conflicts of interest.



### Communication

[Notification and request to conduct preliminary investigation](#)

An example of a completed letter is included in Appendix 4.

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The person selected as an investigator may be:

- › a suitably qualified volunteer member
- › a district manager or other district staff member
- › a regional manager or regional staff member
- › an officer from the Professional Standards Unit, or
- › an external investigator approved by the Director Regional Services.

## 10 The role of the investigator

The role of an investigator is to:

- › ascertain all of the relevant facts
- › determine whether, taking into account all of the facts and circumstances, there is sufficient material to establish that the alleged conduct did in fact occur
- › determine whether, taking into account all of the facts and circumstances, the conduct alleged, assuming that it did occur, constitutes a breach of discipline
- › prepare a report for consideration by the person who appointed the investigator.

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### Safeguard

The investigator can make recommendations regarding disciplinary action but they cannot be the decision maker.



The investigator is responsible for ensuring a sound, timely and procedurally fair investigation is undertaken in compliance with Service Standard 1.1.2 and the Conducting a Volunteer Discipline Investigation guide.

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### Action

A step by step process to developing an investigation terms of reference is Appendix 2 of this chapter.



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## 11 Standard of proof

The standard of proof required in an investigation into a complaint / allegation of a breach of discipline is the 'balance of probabilities'. This means that to sustain an allegation it must be 'more probable than not' that the allegation is true. This may require the investigator to compare competing versions of events from the person making the complaint/allegation, the member concerned and any witnesses and/or from reviewing documentation to determine which version is the more probable.

The investigator does not determine if the conduct occurred, they must collect evidence / material of sufficient quantity to allow the ADA to make a finding, on the balance of probabilities.

The 'Conducting a Volunteer Investigation' guide contains additional important information on the standards of proof and weighting of evidence in balance of probability determinations.

### Ensuring procedural fairness to the volunteer member concerned

Where it has been determined that an allegation is to be dealt with as a breach of discipline, the volunteer member subject to the allegation is entitled to procedural fairness before any adverse findings can be made or action taken against the member. This is sometimes referred to as 'natural justice'.

This means that the following safeguards must apply:

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#### Safeguards for volunteer members who are subject to the allegation/s:

- › they are to be provided with an overview as to how the complaint/allegation is to be managed;
- › they are to be informed of the details of the complaint/allegation being investigated, so they understand what incident, conduct or behaviour is the basis of the complaint/allegation and where relevant the section/s of the Act, Regulation or Service Standard/s it is alleged they may have breached;
- › they are to be provided with a reasonable opportunity to provide a detailed response to the complaint/allegation, either verbally, in writing or both;



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- › the person who is appointed to conduct the investigation will not be a party to, or have a direct interest in the complaint/allegation (i.e. they must not be the person who made the allegation, or a relative of any party, or a witness to the alleged action, conduct or behaviour or have any conflict of interest);
  - › the person who is appointed to conduct the investigation will make reasonable inquiries or investigations into the complaint/allegation and this information will be used to make findings and recommendations and be presented in an investigation report;
  - › any person conducting inquiries or investigations and any Appropriate Disciplinary Authority (including members of a District Disciplinary Panel) will act fairly and without bias;
  - › the volunteer member concerned will have an opportunity to present their case and respond to the findings of the investigation at a disciplinary hearing before any decision is made by an Appropriate Disciplinary Authority.
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#### **Further safeguards for volunteer members who are subject to the allegation/s:**



- › if they choose to respond at interview they may have a support person of their choice present;
  - › they have a right to privacy and that no information in relation to the complaint/allegation will be provided to third parties, unless absolutely necessary;
  - › the volunteer member concerned will be given the opportunity to be represented or accompanied at any disciplinary hearing.
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## **12 Keeping the person who made the complaint informed**

For privacy reasons the person making the allegation may not always be able to be informed of the specific action/s taken against the volunteer member the subject of the allegation.

However where possible they should be advised of the general course of action, i.e. the allegation is to be managed in accordance with Service Standard 1.1.3 Grievances, or Service Standard 1.1.2 Discipline or some other management action.

## **13 Appropriate Disciplinary Authority**

In accordance with the *Rural Fire Service Regulation 2013*, an Appropriate Disciplinary Authority must be:

- › an officer of or above the rank of Superintendent (Discipline Delegate) appointed by the Commissioner, or
  - › a Local or Regional Disciplinary Panel.
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#### **Caution**



Only an Appropriate Disciplinary Authority may take disciplinary action against a volunteer member.

**A District Manager is not an ADA unless specifically appointed to do so by the Commissioner.**

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### Caution

**This guide (eg Sections 12 – 14) is to be read in conjunction with Service Standard 1.1.2 Discipline and associated SOPs. If any ambiguity or inconsistency, the Service Standard and SOPs take precedence.**

## 14 Disciplinary panels

A disciplinary panel must consist of three (3) volunteer members appointed by the District Manager, in accordance with the SOP established in Service Standard 1.1.2.

One of the volunteer members of the disciplinary panel must be a currently elected serving Group Captain, who will normally act as the Chairperson of the panel.

Local disciplinary panel members are to be appointed for a two (2) year term.

Disciplinary panel members must not participate in any disciplinary hearing where they are a party to, or have a direct interest in the complaint/allegation i.e. they must not be the person who made the allegation, or a relative of any party, or a witness to the alleged action, conduct or behaviour.

If a disciplinary panel member is unable, or considers it inappropriate, to participate in a particular disciplinary hearing, the relevant district manager must temporarily appoint another volunteer member for the purpose of that disciplinary hearing.

## 15 Regional disciplinary panels

A regional disciplinary panel must consist of volunteer members appointed by the Commissioner, following expression of interest (EOI).

One of the volunteer members of the regional disciplinary panel must have experience in the conduct of disciplinary proceedings whether in the context of the NSW RFS or elsewhere.

Regional disciplinary panel members are to be appointed for a two (2) year term.

Disciplinary panel members must not participate in any disciplinary hearing where they are a party to, or have a direct interest in the complaint/allegation i.e. they must not be the person who made the allegation, or a relative of any party, or a witness to the alleged action, conduct or behaviour.

If a disciplinary panel member is unable, or considers it inappropriate, to participate in a particular disciplinary hearing, the Commissioner must temporarily appoint another volunteer member for the purpose of that disciplinary hearing.

## 16 Investigation report review / hearing brief

The appointing officer upon receipt of an investigation report that makes recommendation for referral to an ADA must conduct a review of the report to ensure the following:

- › all statements and material referred to in the investigation report are complete and contained within the report package
- › the evidence collected is sufficient to support the recommendations of the investigator
- › the evidence contained within the report is appropriate with consideration to personal and private information.

The appointing officer at this point has the ability to add any other information relative to the matter and also needs to consider the total report and decide if the matter should proceed to the ADA or be dismissed.

Where the appointing officer decides to not let a discipline matter proceed to a discipline hearing, against the recommendation of the investigator a full brief must be prepared and submitted to the next in charge for concurrence.

## 17 Disciplinary hearings

A disciplinary hearing will be conducted at the conclusion of an investigation and review by the appointing officer in accordance with the Service Standard and Appendix 3 of this chapter, in order to:

- › consider the allegation/s and the evidence upon which they are based in the investigator's report and any other material that has been provided.
- › provide the volunteer member the subject of the allegation/s with an opportunity to present his or her case which may include:
  - › asking questions of witnesses
  - › providing additional material or calling additional witnesses
  - › making submissions in relation to the matter.
- › allow the disciplinary panel members an opportunity to ask the volunteer member the subject of the allegation/s concerned (or witnesses, where appropriate) any questions.
- › determine whether the volunteer member the subject of the allegation/s is guilty of a breach of discipline.
- › if the disciplinary panel finds the volunteer member the subject of the allegation/s is guilty of a breach of discipline determine the appropriate disciplinary action (penalty).

## 18 Disciplinary action

A disciplinary panel may:

- › find the respondent not guilty and dismiss the allegation; or
- › find the complaint/allegation against the Volunteer member concerned **has been substantiated** (guilty) and take any of the disciplinary actions detailed in Clause 9 (3) of the Rural Fires Regulation 2013, namely:
  - › reprimand the member
  - › suspension the member for a specified period
  - › recommend to a regional manager that the regional manager:
    - › demote the member
    - › disqualify the member from holding rank in the brigade or group
    - › remove the member's name from the brigade register
    - › impose a condition on the member's membership.

It is the role of the District Manager to ensure all correspondence is completed and the parties informed of the outcome ensuring adherence to the timeframe specified within the service standard.

## 19 Appeal

A volunteer member may appeal to the Commissioner or his/her delegate against:

- › any finding of an Appropriate Disciplinary Authority; and/or
- › any penalty that the Appropriate Disciplinary Authority proposes to impose or has recommended to the regional manager to impose.

Appeals should be made in writing and the volunteer member concerned must provide the grounds for their appeal. On an appeal, the Commissioner or delegate may:

- › confirm the decision of the Appropriate Disciplinary Authority, or
- › recommend that no action, or that other disciplinary action, be taken against the volunteer member.

## 20 Appendix 1 – Initial Assessment of Complaints / Allegations

### Purpose

This appendix sets out the initial assessment procedures that District and Regional Managers must apply on receipt of an allegation of a breach of discipline against a volunteer member, in order to:

- › identify the details of the allegation
- › assess the seriousness, or otherwise of the allegation/s made
- › assess if any of the persons involved are at further risk of harm and then take any necessary action to ensure their health and safety
- › identify the most appropriate Service Standard for managing the allegation further.

### Procedures

#### Identify the details of the allegation

Review the written allegation/s to determine:

- › who was involved (eg the person making the allegation and the Volunteer member concerned)?
- › what action, conduct or behaviour was alleged to have occurred?
- › where did it occur?
- › when did it happen?
- › was anyone else present who saw what happened (eg witnesses)?
- › was this a one off incident?
- › what outcomes the person making the allegation is seeking (if known)?

Contact the person who made the allegation, if necessary to clarify and check any details. Make a written record of any additional information gathered and provide that to the complainant to confirm its accuracy.

#### Assess the seriousness of the allegation

Review the information collected to determine if the alleged actions, conduct or behaviour of the member concerned is trivial or serious. In making your assessment about the seriousness or otherwise of the complaint/allegation you should give consideration to the following:

- › How frequent has the alleged conduct/behaviour been?
- › How long has the alleged conduct/behaviour been going on?
- › How long has it been since the alleged incident/s took place?
- › How many people are involved?
- › What are the ranks/roles of those involved?

What might the impacts of the alleged conduct / behaviour be on:

- › the health, safety and wellbeing of the person making the allegation
- › the health, safety and wellbeing of other NSW RFS members
- › the operations of the brigade/district/region
- › the interests of the community; and
- › the reputation of the NSW RFS.
- › Has the same complaint/allegation been made against the volunteer member concerned before?
- › What action, if any, has already been taken by the person making the complaint/allegation?
- › What are the expectations of the person making the complaint/allegation?



## Assess if any person involved is at further risk of harm

On the basis of the information provided by the person making the complaint/allegation, assess if they or any other person are at immediate or further risk of harm from the NSW RFS Member concerned.

**Note:** You may not have much information to go on. However, if any of the following circumstances apply it is reasonable to assume the person making the complaint/allegation may be at further risk:

- › the alleged conduct or behaviour is serious and does not appear to be just a one-off incident, and
- › the member concerned will continue to be in the same locality and in direct contact with the person who made the complaint/allegation in the immediate future, (eg the NSW RFS activity has not yet concluded), or
- › the member concerned is often in the same locality and in direct contact with the person who made the complaint/allegation, (eg the NSW RFS activity occurs on a regular basis).

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### Action

Where you have assessed that the person making the complaint / allegation or other persons are at further risk of harm:



- › notify your Next in Charge and discuss the steps you propose to take to address the risks.
  - › take agreed actions to address risks.
  - › contact the Critical Incident Support Services (CISS) to arrange for support for the persons involved.
- 

## Identify the most appropriate Service Standard to further manage the complaint/allegation

To ascertain the most appropriate Service Standard ask yourself the following questions.

- 1. Does the complaint/allegation primarily relate to interpersonal conflict/issues between NSW RFS Members?**
  - a. YES Apply Service Standard 1.1.3 Grievances
  - b. NO Go to next question
- 2. Does the complaint/allegation involve a child or young person under 18 years?**
  - a. YES **STOP** Contact your regional Manager and Professional Standards Unit immediately.
  - b. NO Go to next question
- 3. Has the complaint/allegation been made as a protected disclosure?**
  - a. YES **STOP** Contact Director Regional Services and Professional Standards Unit immediately.
  - b. NO Go to next question
- 4. Does the complaint / allegation involve possible criminal conduct?**
  - a. YES **STOP** Contact your Regional Manager and Professional Standards Unit immediately. Follow their directions given.
  - b. NO Go to next question
- 5. Does the complaint / allegation relate to actions, conduct or behaviour that if sustained may be a serious breach of the NSW RFS Code of Conduct and Ethics?**
  - a. YES Apply Service Standard 1.1.2 Discipline
  - b. NO Go to next question
- 6. Does the complaint / allegation relate to actions, conduct or behaviour that if sustained may be in breach of the Rural Fires Act and / or Regulation?**
  - a. YES Apply Service Standard 1.1.2 Discipline

- b. **NO** Go to next question
7. **Does the complaint/allegation relate to actions, conduct or behaviour that if sustained may be a serious breach of other NSW RFS Service Standards?**
- a. **YES** Apply Service Standard 1.1.2 Discipline
- b. **NO** Go to next question
8. **Does the complaint/allegation relate to actions, conduct or behaviour that if sustained would amount to the NSW RFS member concerned being found negligent, careless, inefficient or incompetent in the discharge of his or her duties?**
- a. **YES** Apply Service Standard 1.1.2 Discipline
- b. **NO** Go to next question
9. **Does the complaint / allegation relate to actions, conduct or behaviour that on the face of it appears to be only a very minor breach of the Code of Conduct or another NSW RFS Service Standard?**
- a. **YES** Confirm this decision with your Regional Manager and where they concur apply *manage by Local Management Action*.
- b. **NO** Go to next question
10. **Is the complaint/allegation possibly false, frivolous or vexatious? See glossary for definition of vexatious.**
- a. **YES**  
Discuss your assessment with your Next in Charge and where they concur, inform the NSW RFS Member who has made the complaint / allegation that you intend to dismiss the complaint / allegation, unless the NSW RFS Member can show good cause as to why their complaint / allegation shouldn't be considered frivolous or vexatious.  
If the person cannot show good cause, the complaint / allegation should be dismissed and the NSW RFS Member advised that in lodging a false, frivolous or vexatious complaint their actions may be considered a breach of discipline.
- b. **NO**  
If you get to this point and still cannot decide on the most appropriate Service Standard or Standard Operating Procedure you should go back and seek further information from the person making the complaint / allegation.

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### Caution

A complaint/allegation must be responded to by one of the options detailed above. There is no option to 'just do nothing' or 'ignore the complaint/allegation and hope it goes away'. If you are unsure, seek guidance from your Next in Charge on the best way of managing the complaint/allegation.



Failure to manage appropriately a complaint/allegation may damage the reputation of the NSW RFS and subsequently lead to misconduct proceedings under Section 69 *Government Sector Employment Act 2013*.

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## 21 Appendix 2 – Developing investigation terms of reference (TOR)

### Purpose

This appendix sets out the procedures for District Managers or Regional Managers when developing written terms of reference for an investigation into a possible breach of discipline.

### Procedures

- › Review the written complaint/notes made by the person receiving the complaint and describe the specific circumstances and issues to be investigated and the specific clause/s of the Act, Regulation or Service Standard the member concerned is alleged to have breached.
- › The person making the complaint/allegation may or may not have listed their concerns as separate allegations. To ensure the investigator is clear about what is/is not in the investigation it is necessary to break down the complaint into its component parts.
- › The person making the complaint/allegation may or may not have correctly identified the specific clause/s of the Act/Regulation, or the particular NSW RFS Service Standard the NSW RFS member concerned is alleged to have breached. To make certain the investigator can make sound and appropriate findings it is essential when defining terms of reference to identify the correct section/sections of the Act, Regulation and Service Standard.



#### Caution

In respect of Service Standards it is highly likely that the alleged conduct relates to more than one section of a Service Standard, or even more than one Service Standard.

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The need for identifying the correct section/s also applies where the complaint/allegation states, or indicates, that the member concerned may have been negligent, careless, inefficient or incompetent in the discharge of their duties.

For example if the allegation states that “the volunteer member was negligent and/or careless as they were not wearing their helmet on the fire ground” the allegation should be phrased in the terms of reference as:

*“It has been alleged that on <date> you were negligent and / or careless in the performance of your duties as you were not wearing your helmet while on <location> fire ground in breach of:*

- › *Section 3.6 Safety of SS 1.1.7 Code of Conduct and Ethics*
- › *Clause 2.3 of SS 5.1.5 Protective Clothing and Accessories”*

*Define the purpose of the investigation (eg to ascertain whether there is evidence to support the specific allegation/s made).*

*Further you must identify the authority under which the investigator will be operating (eg Service Standard X.X.X and SOP X.X.X).*

*Insert the obligations of the investigator, eg:*

- › *To act fairly, without bias (including disclosing any potential conflicts of interest);*
- › *To give people who are implicated in the investigation a full opportunity to participate and provide any information to the investigation;*
- › *To make all reasonable enquiries to gather evidence before making a finding;*
- › *To complete the investigation in a timely manner; and*

- › To observe strict confidentiality requirements as outlined in Service Standard 1.1.2. Identify the timeframe by which the investigator must complete the investigation and prepare a written report of the findings.

**Caution**

Whilst it is important that investigations are concluded promptly, consideration must also be given to the number and complexity of the allegations.

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- › Detail any specific instructions about who must be interviewed.
- › Where relevant, detail if there are any constraints on the investigation i.e. timing regarding disclosing the allegations to the member concerned due to risk of harm to persons identified or potential to destroy or tamper with evidence if the full details are disclosed too early.
- › Where relevant, list any documentation to be made available to the investigator.
- › Outline the function of the investigation report eg make findings only or make findings and recommendations regarding possible disciplinary action.
- › Identify the recipient of the report eg Appointing Officer.

## 22 Appendix 3 – Conducting disciplinary hearings

### Purpose

This appendix sets out the procedures for the discipline panel when conducting a disciplinary hearing and communicating with the member concerned prior to and after the disciplinary hearing.

### Procedures

#### Prior to the disciplinary hearing

Consult with the other panel members and set a date, time and location for the disciplinary hearing.



#### Safeguard

It is a requirement of Service Standard 1.1.2 Discipline that the Member concerned be given at least 14 (working) days notice of the date, time and location of the disciplinary hearing and the findings of the investigation.

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If any of the panel members advise that they are unable to attend the disciplinary hearing as they have a direct interest in the complaint/allegation, you must contact the district manager so that another panel member can be temporarily appointed.

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#### Communication

Prepare a Disciplinary Hearing Notice ensuring that it contains the following information:



- › date, time and location of the disciplinary hearing
- › the allegations/issues to be considered
- › the purpose of the hearing
- › the entitlement for the volunteer member concerned to bring a support person
- › the need for the volunteer member concerned to maintain confidentiality.

#### [Notice of Discipline Hearing](#)

See attachment 1 to this appendix

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Attach to the disciplinary hearing notice a copy of the investigator's report; ensuring that any reference/s made within the report to a person or persons who have requested that their identity be kept confidential are redacted from the report.

Provide the notice and the investigator's report to the volunteer member concerned, using one of the following methods:

- › physically handing it to them
- › posting it to the residential or business address the volunteer member concerned has provided to the NSW RFS (registered post)
- › emailing it to them at the email address the volunteer member concerned has provided to the NSW RFS.

#### At the disciplinary hearing

Welcome attendees to the disciplinary hearing and request that all electronic devices are switched off to avoid unnecessary disruptions.

Advise attendees that the audio recording of disciplinary hearings by any person present is strictly prohibited unless the recording of same is explicitly requested and permission given by all persons in attendance.

Introduce the panel members and other persons supporting the conduct of the disciplinary hearing, (such as note taker, etc.) and explain each person's role in the disciplinary hearing.

Ask the member concerned and their support person, if present, to introduce themselves.

If a support person is present, outline their role, i.e. the support person may offer physical and emotional assistance/support to the volunteer member concerned, but they cannot advocate or answer questions on the member's behalf, excepting where the volunteer member becomes distressed and then only with the agreement of the panel.

If a support person is not present, confirm with the volunteer member concerned that they were aware of their right to be supported at the disciplinary hearing and ensure that their choice not to avail themselves of this support is recorded by the note taker.

- › Check to ensure the member concerned that they received the notice of disciplinary hearing and the investigator's report.
- › Confirm with the panel members that they have received the investigators report and if relevant any additional information.
- › Check with the member concerned that they understand the purpose of the disciplinary hearing.
- › Advise all attendees that if any party considers an adjournment necessary this is to be requested and will be noted in any final report.
- › Present the allegation/s made against the member concerned and the evidence upon which they are based.
- › Provide the member concerned with an opportunity to present their views and any further information in respect of the investigator's findings.
- › Allow the Appropriate Disciplinary Authority members an opportunity to ask the member concerned (or witnesses, where appropriate) any questions.
- › Allow the member concerned to ask questions and query the evidence.
- › Thank all attendees for their participation in the disciplinary hearing.
- › Inform the volunteer member concerned as to when they can expect written notification of the Disciplinary Panel's decision.

### **After the disciplinary hearing**

Consider the evidence, investigator's findings and report and the response/submission from the member concerned and make an impartial decision on the balance of probabilities as to whether the allegation has been substantiated (guilty) or not substantiated (not guilty).

### **If allegation not substantiated (Not guilty)**

Write to the Volunteer member concerned, summarising the findings of the Disciplinary Panel and the outcome of the disciplinary hearing.

### **If allegation substantiated (Guilty)**

Determine the most appropriate penalty.

Note: When determining the penalty make sure that consideration is given to the following:

- › the nature of the allegations
- › the responses of the volunteer member concerned to the allegations
- › evidence collected during the investigation
- › findings of the investigator.

Write to the volunteer member concerned summarising:

- › the outcome of the hearing

- › any penalties to be imposed
  - › the panel's reasons for the decision; and
- The appeal rights of the volunteer member concerned.

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### **Communication**

Prepare a disciplinary hearing report form upon completion of the discipline hearing and submit to the district or regional manager.



[Disciplinary Report Form](#)

See attachment 2 to this Appendix.

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**Appendix 3 – [Attachment 1 Disciplinary hearing notice](#)**



**Appendix 3 – [Attachment 2 Disciplinary hearing report](#)**

**23 Appendix 4 – [Example of notification/request to conduct preliminary investigation letter](#)**