

INQUIRY INTO EMERGENCY SERVICES AGENCIES

Name: Name suppressed

Date received: 23 July 2017

Partially
Confidential

The Director
Portfolio Committee No. 4 – Legal Affairs
Parliament House
Macquarie Street
SYDNEY NSW 2000

22nd July 2017

Dear Sir/Madam

Submission - Inquiry Into Emergency Service Agencies

Please find enclosed for the attention of the members of Portfolio Committee No. 4, a submission to the Inquiry Into Emergency Service Agencies.

Our submission is concerned with the disciplinary procedures of the NSW Rural Fire Service and how these procedures unfairly affect volunteers of the service. In addition, we have included a brief comment on the merits of moving the NSW Rural Fire Service Head Office to rural NSW.

The process for managing discipline matters involving volunteers within the NSW RFS is unfair and flawed due to:

- Inconsistent interpretation of the procedure by the RFS staff,
- Adversarial process and punitive in nature rather than remedial,
- Lacking impartiality, integrity and transparency creating a perception of bias,
- Prone to ineffective investigations due to lack of training and skills in conflict management and mediation by RFS staff and volunteers on disciplinary panels,
- Conducive to fear and want of openness in dealings between volunteers and the RFS,
- Loss of productivity and anxiety suffered by the volunteer during the discipline process – volunteers are left in limbo once an allegation is made against them which could lead to the loss of volunteers from the RFS,
- The process retains elements of the traditional military disciplinary model of discipline with a punitive punishment focus which is outdated, unfair and unsatisfactory to volunteers,
- The time taken to resolve a disciplinary matter, including assessment, hearing and final proceedings are often unacceptable,
- There is often a negative impact on the morale of the volunteer and their brigade during a protracted adversarial hearing,
- Volunteers required to take time from their family, work and life to provide testimony, without compensation,
- Narrowly focussed disciplinary approach that looks only at the actions of volunteers against prescriptive rules.

We are strongly advocating that all disciplinary matters, involving volunteers of the NSW Rural Fire Service, are investigated and adjudicated by an independant organisation or tribunal such as the NSW Civil and Administrative Tribunal.

This will ensure the process is independant of the RFS, is fair, objective, transparent, impartial and free of potential bias.

Moving the RFS Head Office to the Bush

Moving the NSW RFS to the bush is common sense. It will boost the economy of rural areas. The move will provide more jobs, more spending in local businesses, more kids in local schools and cheaper real estate for staff.

Importantly, it will break down the city centric culture currently prevailing in RFS HQ resulting in better empathy and understanding of the concerns of rural people regarding fire management in NSW.

There are no longer impediments to this move as modern communication technology will ensure timely and effective communication with all stakeholders during a bushfire emergency. Further, a number of NSW Government departments have successfully decentralised to rural NSW in the past (e.g. NSW Department of Agriculture) and decentralisation is currently a key policy of the both Federal and State Governments.

It's time to put the "RURAL" back into the NSW Rural Fire Service.

We would like to speak to the Committee in confidence on the record concerning our submission.

I look forward to your reply.

Sincerely,

Discipline of Volunteer Fire Fighters	Comment	Deficiencies in Service Standard 1.1.2 Discipline
Discipline Procedures in Place	Service Standard 1.1.2 Discipline Version 4.0 Approved 21 st September 2016	See below
Who may take disciplinary action	<p>A discipline delegate; or a disciplinary panel.</p> <p>Note- A discipline delegate is someone appointed by the district manager and a disciplinary panel is a group appointed by the district manager.</p>	<p>Under the service standard, all matters relating to discipline are controlled and adjudicated by the RFS.</p> <p>The key deficiency in the service standard is that there is no independence or impartiality as all disciplinary matters are dealt with internally by the RFS. The service standard and supporting SOPs do not follow the principles of procedural fairness.</p> <p>To be fair to the RFS volunteers subjected to a disciplinary investigation, all disciplinary matters involving volunteers should be investigated and adjudicated by an independent organisation or tribunal such as the NSW Civil and Administrative Tribunal</p> <p>This will ensure the process is independent of the RFS, is objective, transparent, impartial and free of potential bias.</p>
<p>SOP 1.1.2-1 Establishment of Disciplinary Panels</p> <p>A district disciplinary panel</p>	<p>A district disciplinary panel (DDP) must consist of three volunteer members appointed by the district manager after consultation with the district senior management team or the brigades in the district.</p> <p>The members of the district disciplinary panel must be appointed for two years. The members are eligible for reappointment at the end of their terms.</p> <p>One of the members of a district disciplinary panel must be a currently serving group officer who will ordinarily chair the panel.</p>	<ul style="list-style-type: none"> • The power to appoint DDP is vested wholly with district manager who specifies the criteria in consultation with the district senior management team. • There are no specific guidelines for the selection criteria for the appointment of the DDP. • There is no requirement for members of a DDP to have skills, experience or qualifications in mediation and conflict resolution. • There is the potential for the district manager to appoint their mates. • It is unfair for volunteers to judge other volunteers, can cause resentment and

		<ul style="list-style-type: none"> • antagonism, the legacy which can last for years in the RFS. • Disciplinary matters should be managed by an organisation, entirely independent of the RFS such as the NSW Civil and Administrative Tribunal.
<p>SOP 1.1.2-1 Establishment of Disciplinary Panels</p> <p>A regional disciplinary panel</p>	<p>A regional disciplinary panel must consist of three volunteer members and nine reserve volunteer members appointed by the Commissioner from a regional pool established pursuant to clause 2.14 of this SOP.</p>	<ul style="list-style-type: none"> • In calling for expressions of interest, the Commissioner may specify the criteria that he or she will consider when appointing a member to the pool. • There are no specific guidelines for the selection criteria for the appointment of the RDP. • There is no requirement for members of a RDP to have skills, experience or qualifications in mediation and conflict resolution. • There is the potential for the commissioner to appoint his mates. • It is unfair for volunteers to judge other volunteers; this can cause resentment and antagonism, the legacy which can last for years in the RFS. • Disciplinary matters should be managed by an organisation entirely independent of the RFS such as the NSW Civil and Administrative Tribunal.
<p>SOP 1.1.2-2 Investigation of Allegations</p>	<p>An Investigator can be a member of the RFS or other person appointed by an appointing officer to investigate an alleged breach of discipline.</p>	<ul style="list-style-type: none"> • If a member of the RFS is appointed, then the investigation is not independent. • If another person is appointed (e.g. a person from outside the RFS) there are no guidelines for their appointment in the SOP. They need to be entirely independent of the RFS. • There is no requirement in the SOP for the investigator to have formal qualification and experience in the conduct of an investigation. • In collecting evidence there is no requirement

		<p>in the procedure for the investigator to collect evidence from all persons who were involved in the alleged incident or who saw or heard the event.</p> <ul style="list-style-type: none"> • The procedure is flawed because there is no specific requirement for the investigator to gather evidence from all persons who witnessed or are associated with an alleged incident. • Our understanding of a previous and current case in the RFS is that the investigator collects evidence only from the complainant making the allegation and requires the defendant to respond to that allegation. The investigator then makes recommendations based on this information. • The SOP for investigating allegations does not follow the rules of procedural fairness, as there is no requirement to collect evidence from all parties.
SOP 1.1.2-3 Disciplinary Hearings	<p>The procedure for conducting a disciplinary requires the disciplinary panel to:</p> <p>a. Observe the rules of natural justice; and</p> <p>b. Allow the respondent to be represented or assisted by others.</p> <p>The disciplinary panel is not bound by the rules of evidence.</p> <p>The disciplinary panel may, subject to the requirements of this SOP and the obligation to observe the rules of natural justice, determine how it will hear a matter.</p> <p>The investigator or another member may attend the disciplinary hearing to present the case against the respondent.</p> <p>If the disciplinary panel finds the respondent guilty of a breach of discipline and intends to:</p> <p>a. Impose any penalty; or</p> <p>b. Recommend that the regional manager take</p>	<ul style="list-style-type: none"> • The disciplinary panel is not bound by the rules of evidence. • Rules of evidence. The rules of evidence are set out in the Evidence Act 1995 (NSW). The Act sets out what evidence may be considered by a court when it makes a decision in a case and is meant to ensure that only fair and reliable evidence is considered. • There is no requirement of the investigator to collect evidence from all parties. • How can the investigator present the case against the respondent? How is this consistent with the requirements of procedural fairness and natural justice? • How can volunteers on a DDP or RDP without appropriate skills, experience or qualifications in mediation and conflict resolution determine an appropriate penalty?

	any action against the respondent, the disciplinary panel must give the respondent at least 14 working days' notice in writing of its findings and of the proposed penalty or recommendation.	<ul style="list-style-type: none"> There are no criteria in the service standard or SOPs on the relationship between the breach of discipline and the penalty imposed. How do the RFS determine that the penalty imposed is commensurate or appropriate to the breach of discipline?
Penalties	<p>A disciplinary panel may:</p> <p>find the respondent not guilty and dismiss the allegation; or</p> <p>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:</p> <p>reprimand the member</p> <p>suspension the member for a specified period</p> <p>recommend to a regional manager that the regional manager:</p> <p>demote the member</p> <p>disqualify the member from holding rank in the brigade or group</p> <p>remove the member's name from the brigade register</p> <p>impose a condition on the member's membership.</p>	<ul style="list-style-type: none"> The Service Standard does not account for a public apology in the case of a wrongful conviction that is overturned on appeal The Service Standard does not provide for disciplinary action to be taken against persons who lied during proceedings or provided false and misleading statements or vexatious statements The Service Standard provides only for punitive action and no remedial managerial actions Remedial action should include; training and development mentoring increased professional, administrative or educational supervision professional counselling anger management personal development non-disciplinary transfer restricted duties recording of adverse findings reduction in rank or seniority good behaviour bond
SOP 1.1.2-4 Appeal Procedure	The only right of appeals must be in writing addressed to the Commissioner of the NSW RFS. The Commissioner may refer an appeal to any member(s) of the NSW RFS for determination. The Commissioner, or member(s) to whom the appeal has been referred by the Commissioner, may conduct	<ul style="list-style-type: none"> There is no mechanism to appeal an unfavourable finding or penalty beyond the RFS.

	the appeal in any manner he or she considers appropriate provided that the rules of natural justice are observed.	
Conflict of Interest Criteria for DDP or RDP	<p>If a member of a local or regional disciplinary panel:</p> <p>a. Makes an allegation or causes an allegation to be made;</p> <p>b. Is a witness or potential witness in relation to an allegation;</p> <p>c. Is involved in the events or circumstances relating to an allegation;</p> <p>d. Has assisted in the respondent in responding to the allegation; or</p> <p>e. Is a relative or business associate of:</p> <p>i. The respondent;</p> <p>ii. The person who made an allegation or caused it to be made; or</p> <p>iii. A person who is a witness or potential witness in relation to an allegation;</p> <p>then the person must not participate as a member of the disciplinary panel in any disciplinary hearing related to that allegation.</p>	<ul style="list-style-type: none"> • Conflict of Interest Criteria is too narrow • It does not provide for a member of a DDP or RDP to be removed from a discipline hearing if: <ul style="list-style-type: none"> - they have had previous conflict with the volunteer - has demonstrated on the public record a bias or prejudicial behaviour towards the volunteer subject to an allegation - is a personal friend of the person who made the allegation - is a member of the same brigade as the person who made the allegation - is a member of the same brigade as the person against whom the allegation has been made • Does not allow a volunteer the right to request the removal of a member of the disciplinary panel during a hearing if they demonstrate bias or prejudicial conduct or do not follow correct procedures or natural justice • Does not provide for circumstances under which a member of a DDP can be removed from a DDP during their appointed term
RFS District Manager or Regional Manager	Appointing officer. the person who appoints an investigator pursuant to clause 2.4 of SOP SS1.1.2-2 Investigation of Allegations or, if no investigator is appointed pursuant to clauses 2.1 or 2.2 of the investigation SOP, the person who investigates an allegation pursuant to the investigation SOP.	<ul style="list-style-type: none"> • Conflict of Interest Criteria is too narrow • It does not provide for the district manager or regional manager to be removed from deciding a disciplinary matter if: <ul style="list-style-type: none"> - they have had previous conflict with the volunteer - have demonstrated on the public record a bias or prejudicial behaviour towards the volunteer subject to an allegation - is a personal friend of the person who made

		<p>the allegation</p> <ul style="list-style-type: none"> - is a member of the same brigade as the person who made the allegation - is a member of the same brigade as the person against whom the allegation has been made - have initiated previous disciplinary action against the volunteer concerned <ul style="list-style-type: none"> • Does not allow a volunteer the right to request the removal of district manager from the disciplinary hearing if they demonstrate bias or prejudicial conduct do not follow correct procedures or natural justice
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END OF SUBMISSION