

# POLICY P1.1.6

## REPORTING CHARGES AND/OR

## CONVICTIONS FOR SERIOUS OFFENCES (BY

## STAFF MEMBERS)

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Policy Contact	Director, Professional Standards
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### 1 Purpose

- 1.1 This Policy outlines the principles and procedures that apply to all staff members of the NSW Rural Fire Service (NSW RFS) in respect of the requirements of Clause 9 of the *Government Sector Employment Regulation 2014* to report to the Executive Director, Membership and Strategic Services (through line management) when they are charged with a serious offence and / or if convicted or found guilty of such offence/s.
- 1.2 Charges or convictions may relate to an incident or conduct that happened while the staff member was on duty, off duty or before they were employed by the NSW RFS.

### 2 Definitions

- 2.1 For the purpose of this policy, the following definitions apply:
  - a. **Charged:** when the police (whether in NSW or any other State or Territory) formally lay charges upon a person and provide a Court Attendance Notice or Field Court Attendance Notice for committing an offence;
  - b. **Convicted:** when the court (whether in NSW or any other State or Territory) finds a person guilty of an offence. Convicted of an offence includes being found guilty of the offence without the court proceeding to a conviction;
  - c. **Line Manager:** any NSW RFS staff member who is part of the chain of command and directly supervises or manages one or more NSW RFS staff members;
  - d. **Staff Member:** a staff member includes:
    - i. temporary or ongoing employees;
    - ii. any employee of another government agency on secondment to the NSW RFS; and
    - iii. all consultants, contractors and agency employees engaged to perform work for, or on behalf of the NSW RFS.

- e. **Relevant documents:** Court Attendance Notices (CANs), Field Court Attendance Notices (Field CANs), charge sheets, written advice from the staff member's legal representative on the outcome and police records;
- f. **Serious Offence:** an offence punishable by imprisonment for 12 months or more (including an offence committed outside of NSW that would be an offence so punishable if committed in NSW). The prison term refers to the period that the offence may carry not the actual prison term that is imposed. A serious offence includes, but is not limited to:
  - i. A "sexual offence" as defined in section 7(4) of the *Criminal Records Act 1991* or a similar offence in another jurisdiction;
  - ii. Any dealings with or involving a person under the age of 18 years;
  - iii. Dishonesty, including theft or fraud;
  - iv. Assault or violence against a person;
  - v. The death or injury of another person;
  - vi. The importation, manufacture, cultivation, sale, distribution or trafficking of drugs;
  - vii. Terrorism, however described;
  - viii. Arson or the setting of fires, however described;
  - ix. Serious traffic offences such as:
    - Drink driving
    - Dangerous or negligent driving where someone is hurt; or
    - Driving whilst disqualified ; or
  - x. Public mischief or the making of false alarms.

### 3 Policy

#### Staff Member Responsibilities

- 3.1 When a staff member is charged with a serious offence and / or if convicted or found guilty of such offence/s they must report this to the Delegate through their line manager in accordance with Clause 9 of the *Government Sector Employment Regulation 2014*. The Delegate for such disclosures is the Executive Director, Membership and Strategic Services (EDMSS).
- 3.2 Staff members must formally disclose the full details of the charges / convictions and provide relevant documents to the EDMSS, via their line manager on the disclosure form within **seven** days of being charged/convicted.
- 3.3 Staff members who have been charged (but not yet convicted) of a serious offence must keep their Line Manager and the EDMSS informed of the progress and outcomes of any court proceedings.

#### Staff Member who is also a Volunteer Member

- 3.4 Where a staff member is also a volunteer member, the staff member must identify their volunteer membership as part of the disclosure to their Line Manager.
- 3.5 In this case, the staff member must also disclose their charge / conviction as per Service Standard 1.1.21 Stand Down/Removal from Membership & Notification of Criminal Charges & Convictions in respect of their volunteer membership.

#### Line Manager Responsibilities

- 3.6 Line Managers have a responsibility to notify the EDMSS or Director Professional Standards (DPS) immediately when a staff member has reported to them that they have been charged, convicted or found guilty of a serious offence, and to ensure that the staff member completes a disclosure form.
- 3.7 Line Managers also have a responsibility to concurrently prepare a detailed submission to the EDMSS (via their Executive Director) identifying any issues of concern, and making a recommendation in respect to the risk associated with charges / convictions on the ongoing employment of the staff member and to the NSW RFS.

- 3.8 Where a staff member is also a volunteer, the line manager must include this information in the detailed submission to their Executive Director.
- 3.9 Where a Line Manager becomes aware of a charge or conviction against a staff member they should discuss the matter directly with the staff member and advise them of the disclosure requirements.
- 3.10 Where a staff member has not, will not or is unable to make a disclosure the Line Manager must notify and obtain advice from the DPS.

### Executive Director Responsibilities

- 3.11 Executive Directors must ensure that the disclosure form and any attached documentation, together with the line manager’s submission is reviewed and referred promptly to the Executive Director, Membership and Strategic Services.
- 3.12 Line Executive Directors may choose to support the line manager’s recommendation or make an alternative recommendation identifying any issues of concern in respect to the risk associated with the charges / convictions on the ongoing employment of the staff member and to the NSW RFS.

### Role of the Delegate

- 3.13 The Commissioner has delegated the function for dealing with misconduct by NSW RFS staff members (or any charge/s or conviction/s for a serious offence by a staff member) to the Executive Director, Membership and Strategic Services.
- 3.14 Under this delegation the Executive Director, Membership and Strategic Services has the authority to consider all aspects of the charges or convictions (including their severity) in making a determination regarding the staff member’s ongoing employment. Each case will be determined on its individual merits.
- 3.15 Any action taken in regard to the staff member’s ongoing employment will be done in accordance with Sections 69(4) and 70 of the *Government Sector Employment Act 2013*, and the *Government Sector Employment Regulation 2013*, and the *Government Sector Employment Rules 2014*.

## 4 Related documents

- [Government Sector Employment Act 2013](#)
- [Government Sector Employment Regulations 2014](#)
- [Government Sector Employment Rules 2014](#)
- [Service Standard 1.1.7 Code of Conduct and Ethics](#)
- [Service Standard 1.1.21 Stand Down/Removal from Membership and Notification of Criminal Charges and Convictions](#)
- [Staff Member Disclosure of Criminal Charges or Serious Offence/Conviction Form](#)

## 5 Amendments

AMENDMENT DATE	VERSION NO	DESCRIPTION
23 June 2015	1.0	Initial release
13 February 2019	1.1	<ul style="list-style-type: none"> <li>➤ Repeals and remakes P1.1.6 Reporting and Disclosing Serious Offences (Criminal Charges) and/or Convictions by Staff Members v1.0</li> <li>➤ Change of title to <i>Reporting Charges and/or Convictions for Serious Offences (by Staff Members)</i></li> <li>➤ Minor update to align with current processes; related form updated</li> </ul>