



## SERVICE STANDARD 1.1.24 ASSISTANCE IN LEGAL MATTERS FOR MEMBERS OF THE NSW RFS

ITEM	DESCRIPTION
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### 1 Purpose

- 1.1 This Service Standard sets out the process to apply for legal representation or assistance where a member of the NSW RFS is involved in civil or criminal legal proceedings or inquiries associated with or arising out of the activities of the NSW RFS.
- 1.2 There are two categories of legal assistance. These are:
  - a. Provision for ex gratia assistance for legal representation under Premier's Memorandum M1999-11 Guidelines for the Provision of ex Gratia Legal Assistance for Minister's, Public Officials and Crown Employees; and
  - b. Assistance to members appearing as witnesses, or required to give statements for inquiries or other proceedings.
- 1.3 This Service Standard does not apply to obtaining legal advice for corporate matters. Refer to Policy P5.1.9 Obtaining Legal Advice.

### 2 Definitions

- 2.1 For the purposes of this Service Standard the following definitions apply:
  - a. **Ex Gratia:** The provision of legal representation is discretionary. That is, there is no automatic right of legal representation;
  - b. **Legal Assistance:** Assistance in legal matters which is provided to members who are required to appear as witnesses, or who are required to give statements for inquiries or other proceedings arising out of their NSW RFS duties;

- c. **Legal Representation:** Representation for members organised under the provisions of the Premier's Memorandum M1999-11;
- d. **Investigation:** The process undertaken to certify that the circumstances surrounding the application for legal representation relate to the members official duties and are in accordance with the Premier's Memorandum M1999-11.

## 3 Policy

### Ex gratia legal representation for members of the NSW RFS

- 3.1 The Premier's Memorandum M1999-11 describes the circumstances in which an application for ex gratia legal representation may be made. To be eligible, the member must establish that his or her involvement in the proceedings (either civil or criminal) or coronial inquiry relates to official duties and that he or she has a substantial and direct interest in the proceedings.
- 3.2 Under the Premier's Memorandum, the Commissioner of the NSW RFS refers applications that are supported, to Secretary of the Department of Justice for determination. Before this can occur, the NSW RFS must conduct an investigation into the circumstances relating to the application. An investigation entails completing the Ex Gratia Legal Representation Checklist and Approval form.

### Process to apply for legal representation (under ex gratia)

- 3.3 To apply for legal representation, the applicant must complete and submit an Application for Ex Gratia Legal Representation form.
- 3.4 The application must contain a full disclosure of the applicant's knowledge of the items as requested in the Application Form. If at any stage it is found that full disclosure has not been made and/or you acted unreasonably, ex gratia representation may be withdrawn and disciplinary action may be initiated.
- 3.5 The District Manager/supervisor is required to complete an Ex Gratia Legal Representation Checklist and Approval Form. The completed Application for Ex Gratia Legal Representation form and Ex Gratia Legal Assistance Checklist and Approval form will be sent to the Executive Director Executive Services who will make a recommendation to the Commissioner on whether the application complies with the Premier's Memorandum and should be supported.
- 3.6 An Executive Director may at any stage of the process request additional information as required.
- 3.7 If the Commissioner supports the application, it will be sent to the Secretary of the Department of Justice for consideration.

### Applications that will not be supported (under ex gratia)

- 3.8 Applications may not be supported by the Commissioner for:
  - a. Matters where it is alleged that a member has committed a criminal offence while acting in his/her capacity as a member of the NSW RFS, and the Commissioner is of the view that the member was behaving contrary to the Code of Conduct;
  - b. Disciplinary action against the applicant that has been commenced under the *Rural Fires Regulation 2013*;
  - c. Matters involving unsatisfactory performance or misconduct of the applicant under the *Government Sector Employment Act 2013*;
  - d. Matters where the member has been asked to provide a routine statement to police or another agency about an incident attended by the member; and
  - e. Disputes between individual members.
- 3.9 The Commissioner may also decline an application for any other reason s/he deems fit.

### Withdrawal of representation (under ex gratia)

- 3.10 Legal representation may be withdrawn at the discretion of the Secretary of the Department of Justice. For example, legal representation may be withdrawn if the applicant has acted unreasonably or has not made full disclosure.

- 3.11 If the Commissioner forms the view that legal representation is no longer supported, the Commissioner will write to the Secretary seeking the withdrawal of representation.

#### **Assistance to members appearing as witnesses or providing statements for inquiries or other proceedings**

- 3.12 If a member is asked to appear as a witness or provide a statement for a coronial inquiry or other proceedings, in their capacity as a member of the NSW RFS, they should contact their District Manager who will notify the Legal and Government Information (LGI) section to determine what assistance may be provided to the member.
- 3.13 NSW RFS members should provide any statements, information or submissions to the LGI section who will coordinate and provide it to the requesting party.
- 3.14 The LGI section will coordinate the request for information and statements. For example: the LGI section will liaise with NSW Police, Counsel Assisting the Coroner or legal representatives of third parties to ascertain what information is necessary, contact the relevant NSW RFS member and organise for appropriate information to be provided and organise relevant support for NSW RFS members where necessary.

#### **Other questions**

- 3.15 For all other inquiries related to member's involvement in legal proceedings please contact the Legal and Government Information section. LGI coordinates and manages all legal processes involving the NSW RFS.

## **4 Related documents**

- › *Government Sector Employment Act 2013*
- › *Rural Fires Act 1997*
- › *Rural Fires Regulation 2013*
- › Policy P5.1.9 Obtaining Legal Advice
- › M1999-11 Guidelines for the Provision of ex Gratia Legal Assistance for Ministers, Public Officials and Crown Employees
- › OMP 4.03.01 Notifiable Incidents
- › Ex Gratia Legal Assistance Checklist and Approval Form
- › Application for Ex Gratia Legal Assistance Form
- › Legal and Government Information Handbook

## **5 Amendments**

<b>AMENDMENT DATE</b>	<b>VERSION NO</b>	<b>DESCRIPTION</b>
1 September 2004	1.0	Initial release
1 September 2004	1.1	<ul style="list-style-type: none"> <li>› Repealed v1.0</li> <li>› Heading "Issue" amended to include RFSAC endorsement</li> </ul>
9 May 2016	2.0	<ul style="list-style-type: none"> <li>› Repealed v1.1</li> <li>› Major amendments made following various critical incidents</li> </ul>