



SERVICE STANDARD 1.1.2 DISCIPLINE

ITEM	DESCRIPTION
Title	Discipline
Number	1.1.2
Version Number	4.0
SOPs	<ul style="list-style-type: none">➤ SOP 1.1.2-1 Establishment of Disciplinary Panels➤ SOP 1.1.2-2 Investigation of Allegations➤ SOP 1.1.2-3 Disciplinary Hearings➤ SOP 1.1.2-4 Appeal Procedure
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1 Purpose

1.1 This Service Standard sets out the procedure to be followed when disciplinary action is taken against a volunteer member of the NSW Rural Fire Service (NSW RFS).

2 Definitions

2.1 For the purpose of this Policy Document the following definitions apply:

- a. **Act:** the *Rural Fires Act 1997*.
- b. **ADA:** the Appropriate Disciplinary Authority.
- c. **Allegation:** an allegation made pursuant to clause 3.4 of this Service Standard.
- d. **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.
- e. **Appropriate disciplinary authority (ADA):** a disciplinary panel; or an officer of or above the rank of Superintendent appointed in accordance with clause 3 (1) (a) of the Rural Fires Regulation 2013.
- f. **Disciplinary action:** action taken against a volunteer member of the NSW RFS for a breach of discipline pursuant to clause 9 of the Rural Fires Regulation 2013 in relation to:
 - i. A contravention of the Act or the Regulation;
 - ii. Negligence, carelessness, inefficiency or incompetence in the discharge of their duties; or
 - iii. A failure to comply with Service Standards.

- g. **Discipline delegate:** an officer of or above the rank of Superintendent appointed in accordance with clause 3 (1)(a) Rural Fires Regulation 2013 to act as an ADA
- h. **Disciplinary panel:** a disciplinary panel established in accordance with the provisions of SOP 1.1.2-1 Establishment of Disciplinary Panels
- i. **Investigator:** a member or other person appointed by an appointing officer to investigate an alleged breach of discipline
- j. **Member:** a member of the NSW RFS
- k. **Next in Charge:** the supervisor or manager directly in charge of a NSW RFS member e.g. for a volunteer this would be a captain or group captain; for a district manager, the regional manager; for a regional manager this would be the Director, Regional Services.
- l. **Regulation:** the Rural Fires Regulation 2013
- m. **Respondent:** a volunteer member against whom an allegation of breach of discipline has been made.
- n. **NSW RFS** means the NSW Rural Fire Service.
- o. **Senior Management Team (SMT):** the group of senior local NSW RFS members who assist the District Manager with the strategic and day-to-day management of the rural fire district. Refer to SOP 2.1.4-5 Senior Management Teams for further information.
- p. **Volunteer member:** officers and other members of brigades and groups of rural fire brigades.

3 Policy

Who may take disciplinary action?

- 3.1 Those persons who may take disciplinary action are referred to in the Regulation as the appropriate disciplinary authority (ADA).
- 3.2 Depending upon the circumstances of each case, the ADA will be either:
 - a. A discipline delegate; or
 - b. A disciplinary panel.
- 3.3 The procedure for establishing a disciplinary panel is set out in SOP 1.1.2-1 Establishment of Disciplinary Panels.

Allegations of breach of discipline

- 3.4 A member may make an allegation of a breach of discipline (allegation) to:
 - a. A district manager;
 - b. A regional manager; or
 - c. The next in charge to the member making the allegation

Note: Where a member receives an allegation as the next in charge they must pass the allegation to a District Manager, Regional Manager, Director Regional Services or the Professional Standards Unit as soon as practicably possible.

- 3.5 An allegation must be:
 - a. Made in writing; and
 - b. Signed by the person making the allegation.
- 3.6 An allegation may be submitted by email.
- 3.7 The procedure to be followed upon the receipt of an allegation is set out in SOP 1.1.2-2 Investigation of Allegations.

Disciplinary hearings by a disciplinary panel

- 3.8 A disciplinary panel (or discipline delegate) which receives a report from an appointing officer in accordance with clause 2.9 of SOP 1.1.2-2 Investigation of Allegations must:
- a. Set a time and place at which the disciplinary hearing will be held;
 - b. Give the respondent not less than 7 working days' notice in writing of the time and place at which the disciplinary hearing will be held; and
 - c. Give the respondent a copy of this Service Standard and the associated SOPs.
- 3.9 The notice must be given to the respondent by one or more of the methods referred to in clause 38 of the Regulation which include, but not limited to:
- a. Physically giving it to the person;
 - b. Posting it to their last known residential or business address; or
 - c. Sending it by fax or email to a fax number or email address the person has provided to the NSW RFS as a fax number or email address to which faxes or emails to that person may be sent.
- 3.10 The disciplinary panel (or discipline delegate) must follow the procedure for conducting a discipline hearing as set out in SOP 1.1.2-3 Disciplinary Hearings.

Penalty options

- 3.11 If the disciplinary panel (or discipline delegate) finds the respondent guilty of a breach of discipline it may:
- a. Reprimand the respondent;
 - b. Suspend the respondent for a specified period; or
 - c. Recommend to the relevant regional manager that he or she:
 - i. Demote the respondent;
 - ii. Disqualify the respondent from holding rank in the brigade or group of brigades;
 - iii. Remove the respondent's name from the brigade register; and
 - iv. Impose conditions on the respondent's membership of a brigade or group of brigades.

Appeal process

- 3.12 A respondent who has been found guilty of a breach of discipline may appeal to the Commissioner against either or both of:
- a. The findings of the disciplinary panel (or discipline delegate); and/or
 - b. Any penalty that the disciplinary panel (or discipline delegate) proposes to:
 - i. Impose; or
 - ii. Recommend to the regional manager.
- 3.13 The procedure to be followed in relation to an appeal is set out in SOP 1.1.2-4 Appeal Procedure.

4 Related documents

- > *Rural Fires Act 1997*
- > Service Standard 1.1.7 Code of Conduct and Ethics
- > NSW RFS Fact Sheet Natural Justice
- > Managing Volunteer Discipline*
- > Conducting a Volunteer Discipline Investigation*

**The NSW RFS has developed two guides to assist managers in the practical application of this Service Standard and should be read in conjunction with this Standard.*

5 Amendments

AMENDMENT DATE	VERSION NO	DESCRIPTION
13 January 1998	1.0	Initial release
5 October 2001	1.1	<ul style="list-style-type: none">> Repealed v1.0> Amended clauses 1.5 , 2.2 (2) , and 7
3 November 2003	2.0	<ul style="list-style-type: none">> Repealed v1.1> Amended clauses 1.3 (b), 2.3 (ii) and 2.7
	2.1	<ul style="list-style-type: none">> Repealed v2.0
29 March 2004	2.2	<ul style="list-style-type: none">> Repealed v2.1> Amended clauses 2.18 and 2.19
4 September 2007	3.0	<ul style="list-style-type: none">> Repealed v2.2> Complete review of v2.2
21 September 2016	4.0	<ul style="list-style-type: none">> Repeals v3.0> Complete review of v3.0

SOP SS1.1.2-1

ESTABLISHMENT OF DISCIPLINARY PANELS

1 Purpose

- 1.1 This Standard Operating Procedure outlines the process for establishing local and regional disciplinary panels.

2 Procedure

District disciplinary panel

- 2.1 A District disciplinary panel 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.
- 2.2 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.
- 2.3 One of the members of a District disciplinary panel must be a currently serving group officer who will ordinarily chair the panel.
- 2.4 If a member of a District disciplinary panel is either unable, or considers it inappropriate, to participate in a disciplinary hearing, the District Manager must appoint another volunteer member from the local pool of volunteers for the purpose of that hearing. That substitute member will hold office only until the District disciplinary panel has completed its functions in relation to that hearing.
- 2.5 Where a District Manager is required to appoint one or more volunteers pursuant to clause 2.4 of this SOP, he or she may appoint a volunteer from another district.

Local pool

- 2.6 The District Manager may establish a local pool by:
 - a. Calling for expressions of interest from volunteers in the district; and
 - b. Appointing up to nine members from those who submit expressions of interest to form the pool for the next three years.
- 2.7 In calling for expressions of interest, the district manager in consultation with the district senior management team may specify the criteria that he or she will consider when appointing a member to the pool.
- 2.8 A member of a local pool is eligible for re-appointment to a subsequent pool.

Regional disciplinary panel

- 2.9 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.
- 2.10 If a member of a regional disciplinary panel is either unable, or considers it inappropriate, to participate in a disciplinary hearing, the Commissioner must appoint another volunteer member from the regional pool or, if there is no regional pool another volunteer member from the region, for the purpose of that hearing. That substitute member will hold office only until the local disciplinary panel has completed its functions in relation to that hearing.
- 2.11 The Commissioner must nominate one member of the regional disciplinary panel appointed pursuant to clause 2.6 who has experience in the conduct of disciplinary proceedings (whether that be in the context of the NSW RFS or elsewhere) to chair the panel.
- 2.12 The Commissioner may establish one or more regional discipline panels for each region.
- 2.13 The Commissioner may determine from time to time specific types or classes of alleged breaches of discipline that must be heard by a regional disciplinary panel.

Regional pool

- 2.14 The Commissioner may establish a regional pool for one or more regions by:
- a. Calling for expressions of interest from volunteer members in the region; and
 - b. Appointing up to nine volunteer members from those who submit expressions of interest to form the pool for the next three years.
- 2.15 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.
- 2.16 A member of a regional pool is eligible for reappointment to a subsequent pool.

Conflicts of interest

- 2.17 If a member of a local or regional disciplinary panel:
- a. Makes an allegation or causes an allegation to be made;
 - b. Is a witness or potential witness in relation to an allegation;
 - c. Is involved in the events or circumstances relating to an allegation;
 - d. Has assisted in the respondent in responding to the allegation; or
 - e. Is a relative or business associate of:
 - i. The respondent;
 - ii. The person who made an allegation or caused it to be made; or
 - iii. A person who is a witness or potential witness in relation to an allegation;

then the person must not participate as a member of the disciplinary panel in any disciplinary hearing related to that allegation.

3 Related forms

- > None

SOP SS1.1.2-2

INVESTIGATION OF ALLEGATIONS

1 Purpose

- 1.1 This Standard Operating Procedure provides an outline for the process for investigating an allegation.

2 Procedure

- 2.1 A person who receives an allegation must consider the allegation and, if he or she considers it appropriate:
- Investigate the allegation personally;
 - Appoint another person to investigate the allegation; or
 - Refer the allegation to a more senior officer.
- 2.2 If an allegation is referred to a more senior officer that senior officer must:
- Investigate the allegation personally;
 - Direct the person who referred the allegation to him or her to investigate it; or
 - Appoint another person (who need not be a member) to investigate the allegation;
- in order to determine whether or not the member against whom the allegation has been made has a case to answer.¹
- 2.3 A person who is:
- A witness or potential witness in relation to the allegation;
 - Involved in the events or circumstances relating to the allegation; or
 - Is a relative or business associate of:
 - The respondent;
 - The person who made the allegation or caused it to be made; or
 - A person who is a witness or potential witness in relation to the allegation,must not investigate the matter.
- 2.4 The person who appoints the investigator (the appointing officer) must inform the respondent in writing and the person who made the allegation that an investigation is being conducted,
- 2.5 The investigator must consider each allegation on its merits and must:
- Exercise caution before concluding that the respondent has a case to answer where:
 - The allegation is based on hearsay evidence;² or
 - There has been a lengthy delay in making the allegation and there is no adequate explanation offered for that delay; or
 - There is a possibility that the person who has made the allegation has been motivated by personal rivalry or other inappropriate or improper matters; and
 - Recommend the dismissal of an allegation which is, in the opinion of the investigator:
 - Trivial;
 - Frivolous, or³
 - Vexatious;⁴
- 2.6 If the investigator concludes that the respondent **has** a case to answer in whole or in part then he or she must prepare a report for the appointing officer that:

- a. Specifies the clause(s) of the Regulation and/or Service Standards that are alleged to have been breached by the respondent;
 - b. Contains a summary of the facts, circumstances and other evidence that explains or clearly demonstrates how the Regulation and/or Service Standards have been breached;
 - c. Includes or attaches copies of any statements, other relevant documents or other material that have been gathered or obtained by the investigator; and
 - d. Includes the original allegation unless there are special circumstances that justify the identity of the person making the allegation being kept confidential and the withholding of the identity of the person making the allegation does not prejudice the respondent.
- 2.7 If the investigator concludes that the respondent **does not** have a case to answer he or she must prepare a report for the appointing officer that sets out the reasons for that conclusion including, where necessary, reference to any material obtained by the investigator during the investigation.
- 2.8 The investigator must provide all documents, notes, statements or other material collected or created during the investigation in addition to any document provided in the investigation report to the appointing officer.
- 2.9 Upon receipt of a report prepared in accordance with clauses 2.6 or 2.7 the appointing officer must consider the report and:
- a. If he or she believes that the matter should be dealt with, in whole or in part, as a breach of discipline:
 - i. Refer it to a disciplinary panel or discipline delegate for hearing;
 - ii. Give a copy of the report to the respondent; and
 - iii. Notify the person who made the allegation that the matter will proceed to a hearing;
 - b. The appointing officer may provide additional material to the disciplinary panel or discipline delegate provided that a copy of that additional material is also provided to the respondent;
 - c. If he or she believes that the matter should not be dealt with as a breach of discipline:
 - i. Notify the respondent of that decision;
 - ii. Notify the person who made the allegation that the matter will not proceed further; and
 - iii. Make an appropriate notation⁵ detailing the reasons for that decision.

3 Related forms

- > None

Notes: The following notes are provided for the assistance of the reader and do not form part of the Service Standard.

¹ The nature and formality of the investigation will, in part depend upon the seriousness of the allegations. A useful guide to the conduct of a more formal investigation can be found at http://www.icac.nsw.gov.au/files/pdf/pub2_74cp.pdf

² An allegation that is based on hearsay evidence is one which is made by a person who has no direct knowledge of the events, facts or circumstances that form the basis for the allegation and who is making the allegation based on what he or she has been told by others or read in a document.

³ A frivolous allegation is one that is trifling, does not have any serious purpose or value, is far-fetched or not worth serious attention.

⁴ A vexatious allegation is one that is deliberately made without merit and so as to cause inconvenience, upset, annoyance, frustration or worry to the person against whom it is made or the RFS. If there is some merit in the allegation then it is not vexatious. The fact that the complainant is aggrieved, angry or upset does not necessarily make the allegation vexatious. **See Appendix 1 of Managing Volunteer Discipline for how to assess a frivolous or vexatious complaint.**

⁵ Notes, comments, reasons or other material entered within any approved NSW RFS case management system.

SOP SS1.1.2-3

DISCIPLINARY HEARINGS

1 Purpose

- 1.1 This Standard Operating Procedure outlines the procedure to be followed when conducting a disciplinary hearing.
- 1.2 This SOP refers to hearings by disciplinary panels. The same procedures must be followed by a discipline delegate when conducting a disciplinary hearing.

2 Procedure

- 2.1 In conducting a disciplinary hearing the disciplinary panel must:
 - a. Observe the rules of natural justice; and¹
 - b. Allow the respondent to be represented or assisted by others.
- 2.2 The disciplinary panel is not bound by the rules of evidence.²
- 2.3 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. In appropriate matters a disciplinary panel may, with the agreement of the respondent, determine a matter on the papers.
- 2.4 The investigator or another member may attend the disciplinary hearing to present the case against the respondent.
- 2.5 The disciplinary panel must:
 - a. Keep minutes of the disciplinary hearing, although these need not take the form of a verbatim transcript; and
 - b. Prepare a hearing report form; and
 - c. Send a copy of the minutes and report form to:
 - i. The appointing officer; and
 - ii. Where the appointing officer is not the District Manager, the District Manager; and
 - iii. Regional Manager; and
 - iv. Regional Services at regional.services@rfs.nsw.gov.auwithin 14 working days of the conclusion of the disciplinary hearing.
- 2.6 If the respondent:
 - a. Fails to attend the disciplinary hearing; and/or
 - b. Fails to provide any submission to the disciplinary panel within the time specified; and
 - c. Provides no reasonable explanation for his or her failure to attend or make a submission, the disciplinary panel may proceed to hear and determine the matter in the respondent's absence.
- 2.7 The disciplinary panel must prepare and deliver its decision as soon as practicable and in any event by no later than 14 working days after the conclusion of the disciplinary hearing.

¹ See information sheet entitled *Natural Justice*

² The rules of evidence that apply in a court do not apply to a disciplinary hearing

- 2.8 If the disciplinary panel finds the respondent guilty of a breach of discipline and intends to:
- a. Impose any penalty; or
 - b. Recommend that the regional manager take 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.
- 2.9 The written notice must be given to the respondent in accordance with clause 3.9 of Service Standard 1.1.2.
- 2.10 A copy of the written notice referred to in clause 2.8 must also be sent to:
- a. The respondent's District Manager;
 - b. The respondent's Regional Manager;
 - c. The appointing officer; and
 - d. Regional services at regional.services@rfs.nsw.gov.au
- 2.11 If the disciplinary panel finds the respondent not guilty of a breach of discipline or otherwise dismisses the matter it must advise the:
- a. Respondent;
 - b. Respondent's district manager;
 - c. Appointing officer; and
 - d. Regional services at regional.services@rfs.nsw.gov.au;
- of its decision in writing within 14 clear (working) days of arriving at that decision.

3 Related forms

- > None

Notes: The following notes are provided for the assistance of the reader and do not form part of the Service Standard.

SOP SS1.1.2-4

APPEAL PROCEDURE

1 Purpose

- 1.1 This Standard Operating Procedure outlines the procedure to be followed when conducting an appeal.
- 1.2 This SOP applies to appeals heard in relation to decisions and recommendations of a disciplinary panel or a discipline delegate.

2 Procedure

- 2.1 Appeals must be in writing addressed to the Commissioner of the NSW RFS.
- 2.2 The written appeal may be either posted to the Commissioner (to the NSW RFS Head Office postal address) or emailed to the Commissioner at Commissioners.office@rfs.nsw.gov.au
- 2.3 The appeal must be specific as to what is being appealed i.e. whether it is appealing the finding/s of the disciplinary panel or discipline delegate, and/or the proposed penalty.
- 2.4 The Commissioner may refer an appeal to any member(s) of the NSW RFS for determination.
- 2.5 The Commissioner, or member(s) to whom the appeal has been referred by the Commissioner, may conduct the appeal in any manner he or she considers appropriate¹ provided that the rules of natural justice² are observed.
- 2.6 The Commissioner, or member(s) to whom the appeal has been referred by the Commissioner must:
 - a. Confirm the decision of the disciplinary panel or discipline delegate as the case may be; or
 - b. Substitute his or her own decision for the decision or recommendation of the disciplinary panel or discipline delegate.
- 2.7 Within seven days of the conclusion of the appeal proceedings the Commissioner, or member(s) to whom the appeal has been referred by the Commissioner, must advise the:
 - a. Respondent;
 - b. Respondent's District Manager;
 - c. Respondent's Regional Manager;
 - d. Regional services at regional.services@rfs.nsw.gov.auof his or her decision in writing.

3 Related forms

- > None

Notes: The following notes are provided for the assistance of the reader and do not form part of the Service Standard.

¹ The available options include:

- a. Hearing the matter again; or
- b. Considering the minutes, material considered by the disciplinary panel or Commissioner's appointee and its decision and recommendations together with any further material that the respondent wishes to submit without an oral hearing.

² See note entitled *Natural Justice*