

SERVICE STANDARD 1.1.33

REPORTING AND INVESTIGATING ALLEGATIONS OF A CHILD PROTECTION NATURE

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1 Purpose

- 1.1 The NSW RFS is strongly committed to creating and maintaining a child-safe and child-friendly environment where all members actively keep all children safe from all forms of harm and provide a trusting environment where children feel valued, respected and welcomed.
- 1.2 This Service Standard:
 - a. demonstrates the NSW RFS duty of care and commitment to protecting the safety, wellbeing and best interests of children, whether or not they are members of the NSW RFS;
 - b. enables members to recognise when a child may be at risk of harm, and to respond appropriately;
 - c. reflects the requirements of all members to report any allegation or conviction against a member of reportable conduct and any conduct or behaviour of a member on duty that has, or may affect the safety, wellbeing or best interests of any child;
 - d. seeks to minimise harm to children arising from actions, conduct or behaviour by a member which leads to allegations or reports; and
 - e. details the reporting functions under Section 29 of the *Children’s Guardian Act 2019* and Schedule 1 of the *Child Protection (Working with Children) Act 2012*.

2 Definitions

For the purpose of this Service Standard, the following definitions apply:

- a. **Allegation of a Child Protection Nature:** an allegation of misconduct or a breach of discipline against a NSW RFS member that involves a child.
 An allegation of a child protection nature may also involve reportable conduct and/or criminal conduct.
 An allegation of a child protection nature may be made against any NSW RFS member regardless of age.
- b. **Appointing Officer:** As defined in Service Standard 1.1.2 Discipline

- c. **Appropriate Disciplinary Authority:** 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*.
 - d. **Child:** a person under the age of 18 years.
 - e. **Child related role:** As defined in SS1.1.9 Working with Children.
 - f. **Delegate:** Person delegated by the Commissioner to manage a misconduct investigation in relation to a NSW RFS staff member.
 - g. **Junior Member:** As defined in SS 1.1.9 Working with Children.
 - h. **Investigation:** the process of gathering and systematically analysing relevant information in order to make a finding with respect to an allegation against an NSW RFS Member.
 - i. **Investigator:** A person appointed by the Delegate/Appointing Officer to undertake an investigation into an allegation against an NSW RFS member and prepare an investigation report.
 - j. **Investigation Report:** A report detailing the Investigator's views on the facts (and the materials upon which the views are based), as to whether on the balance of probabilities the person has engaged in the alleged conduct.
 - k. **Local Management Action:** any action taken by a District or Area Manager to appropriately address conduct or behaviour issues with NSW RFS members. Local Management Action may include actions taken under Service Standard 1.1.3 Grievances or the provision of additional instruction or training.
 - l. **Next in Charge:** As defined in Service Standard 1.1.2 Discipline.
 - m. **On duty:** a member is on duty when in attendance, whether in or out of uniform, at any formal or informal NSW RFS activity, including operational activities, meetings, training sessions, maintenance activities, child-related activities, fund raising activities or social activities organised by or conducted under the auspices of the NSW RFS or, in the case of a staff member, when at work.
 - n. **Reportable Allegation:** Section 18(2) of the *Children's Guardian Act 2019* defines a 'reportable allegation' as meaning, in relation to an employee of a public authority:
 - i. if the employee holds, or is required to hold, a working with children check clearance for the purpose of employment with the public authority – an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee's employment, or
 - ii. if the employee is not required to hold a working with children check clearance for the purpose of employment with the public authority – an allegation that the employee has engaged in conduct that may be reportable conduct, unless the conduct is alleged to have occurred outside the course of the employee's employment with the public authority.
- Note:** Section 16 of the *Children's Guardian Act 2019* defines an employee of a public authority as:
- i. An individual employed by, or in, the public authority, or
 - ii. if an individual is engaged directly, or by a third party, as a volunteer to provide services to children – the volunteer, or
 - iii. if an individual is engaged directly, or by a third party, as a contractor and the contractor holds, or is required to hold, a working with children check clearance for the purpose of the engagement – the contractor.
- o. **Reportable Conduct:** Section 20 of the *Children's Guardian Act 2019* defines 'reportable conduct' as:
 - i. a sexual offence
 - ii. sexual misconduct
 - iii. ill-treatment of a child;
 - iv. an assault of a child;
 - v. an offence under section 43B or 316A of the *Crimes Act 1900*; or
 - vi. behaviour that causes significant emotional or psychological harm to a child.

- p. **Reportable Conviction:** a conviction, including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, of an offence involving reportable conduct against a NSW RFS member.
- q. **Significant Risk of Harm:** Circumstances that would reasonably be expected to produce a substantial and demonstrably adverse impact on the child's safety, welfare or wellbeing and that are sufficiently serious to warrant a response by a statutory authority.

3 Policy

- 3.1 The NSW RFS is strongly committed to ensuring that all concerns that are raised in respect to the safety or wellbeing of a child will be taken seriously.
- 3.2 Every member of the NSW RFS has a responsibility to protect the health, safety, welfare and wellbeing of children with whom they have contact, whether or not they are a member of the NSW RFS.
- 3.3 Every member of the NSW RFS has a responsibility to report a concern or allegation to their next in charge or the Professional Standards Unit where they believe a child may be at risk of harm, or where they become aware that a member has been charged or convicted of an offence that constitutes reportable conduct.
- 3.4 Any member approached directly by another person, including a child, who discloses that a child may be at risk of harm from another member, has an obligation to take the necessary and appropriate action to ensure the safety and wellbeing of that child.

What to Report

- 3.5 To ensure the safety of children, members must report:
 - a. any suspicion, observation, concern or allegation about a member's conduct on duty that may place a child at risk of harm;
 - b. information provided to them from any other person that a child is at risk of harm or has been harmed by a member;
 - c. any correspondence or communications (including conversations, letters, notes, emails, text messages and social media or web forum interactions) that indicates that a child may be at risk of harm from a member;
 - d. images, texts, emails, social media or web based material that involves a member and relates to child pornography or the exploitation of children;
 - e. any use of NSW RFS technology to store or send images of child pornography or child exploitation; and
 - f. any knowledge of a member being charged or convicted of an offence that involves reportable conduct.

CAUTION: Members should not forward material containing child pornography or child exploitation via electronic means.

Who to Report to

- 3.6 A member should report a concern or allegation of a child protection nature to their next in charge or directly to the Professional Standards Unit, immediately upon identifying or becoming aware of the concern or allegation.
- 3.7 Where a member becomes aware or receives information that a child may be at risk of harm from another person who is not a member of the NSW RFS, the member should consider reporting the information to an appropriate authority external to NSW RFS, including the Child Protection Helpline or the NSW Police.
- 3.8 Members who have reasonable grounds for suspecting that a child is at **significant** risk of harm and are concerned about the safety, welfare or wellbeing of the child, should immediately contact NSW Police, the Child Protection Helpline on 132 111 or Professional Standards for advice.
- 3.9 Any allegation of a child protection nature against a member is to be directed through the Professional Standards Unit so that appropriate reporting requirements can be met. This does not preclude a member from reporting directly to NSW Police where the member believes there is an imminent risk or threat of harm toward a child.

Failure to Report

- 3.10 Failure to report or respond to an allegation of a child protection nature against a member may place children at risk of harm and may constitute reportable conduct pursuant to sections 43B and 316A of the *Crimes Act 1900*.
- 3.11 Any member who fails to report an allegation of a child protection nature may become the subject of disciplinary or misconduct action in respect to a breach of the NSW RFS Code of Conduct and Ethics.

External Reportable Obligations

- 3.12 The NSW RFS is a public authority under the provisions of the *Children's Guardian Act 2019* and has a legal obligation to notify the NSW Office of the Children's Guardian of any reportable allegations or reportable convictions:
 - a. against a staff member, if that conduct arises in the course of their employment; and
 - b. against a member (staff or volunteer) who is engaged in a child-related role, whether or not the conduct occurs in the course of the member's NSW RFS duties.
- 3.13 In accordance with the *Children's Guardian Act 2019*, the Commissioner will notify the NSW Office of the Children's Guardian of a reportable allegation or reportable conviction, where applicable, as soon as practicable and, within 7 business days of becoming aware of the allegation or conviction.
- 3.14 The Commissioner will provide the NSW Office of the Children's Guardian with all relevant information and documentation as required in accordance with the *Children's Guardian Act 2019*.
- 3.15 An interim report will be provided to the NSW Office of the Children's Guardian within 30 days of becoming aware of the allegation or conviction.
- 3.16 The Professional Standards Unit will manage the external reporting of matters that involve allegations of a child protection nature where appropriate to enable the Commissioner to meet reporting obligations. This includes but is not limited to; the NSW Police Force where the conduct may involve criminal conduct; and the NSW Office of the Children's Guardian in accordance with sections 3.13 to 3.15.

Exchange of Information

- 3.17 The NSW RFS is a prescribed body under the provisions of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1988* that allows agencies to share or exchange information in relation to the safety, welfare and wellbeing of a child or young person, or a class of children or young people, to assess risks, make decisions and provide appropriate services.
- 3.18 Any request for information by another prescribed body in accordance with Chapter 16A must be made confidentially in writing to the Executive Director Membership and Strategic Services.
- 3.19 The provision of any information in accordance with Chapter 16A to another prescribed body or the reasons for refusing to provide such information must be provided in writing to the requesting body by the Director Professional Standards or NSW RFS Legal Services.
- 3.20 Although consent is not necessary for exchange of information under Chapter 16A, it should be sought from the child or their family where possible, safe and appropriate.

Criminal Matters

- 3.21 Any allegations of a child protection nature that involve criminal conduct will be referred to NSW Police.
- 3.22 Any police investigation or inquiry will take precedence over NSW RFS action.
- 3.23 The NSW RFS will be guided by NSW Police in respect of commencing internal action.
- 3.24 The NSW RFS may take action against any member or contractor subject to criminal allegations in accordance with Service Standard 1.1.21 Stand down and Removal of Members and Notification of Criminal Charges or P1.1.6 Reporting and Disclosing Serious Offences (Criminal Charges) and/or Convictions by Staff Members.
- 3.25 Where a member is both a staff and volunteer member, advice on how to proceed should be sought from the Director, Professional Standards.

Witnessing conduct involving a child that may not be appropriate

- 3.26 Where a member directly witnesses conduct that they believe places a child at risk and constitutes an allegation of a child protection nature, the member should:
- a. Wherever possible, discreetly remove the child from the situation to a place of safety. This may be possible by interrupting a conversation or directing the attention of the involved member elsewhere.
 - b. Make notes as soon as practicable regarding the conduct witnessed.
 - c. Immediately report the conduct and provide a copy of notes made to the Next in Charge or the Professional Standards Unit.
 - d. Not discuss the conduct with the member or child concerned without seeking advice from the Next in Charge or Director Professional Standards.

Receiving an allegation of a child protection nature

- 3.27 Members who are approached by another person, including a child, who raises a concern or an allegation of a child protection nature should:
- a. Document the concern or allegation in the person's own words;
 - b. Avoid asking leading questions of the person making the disclosure;
 - c. Obtain appropriate support for the child who is at risk, as soon as practicable; and
 - d. Immediately report the concern to the next in charge, where they are not named in the complaint, or directly to the Professional Standards Unit.
- 3.28 The next in charge receiving the allegation of a child protection nature must:
- a. Complete a risk assessment form based on the information received to determine the seriousness of the allegation and the level of risk associated with the allegation (Risk Assessment – Under development); and
 - b. Immediately escalate the allegation through the chain of command or directly to Professional Standards dependent on the level of seriousness.

Assessment of an allegation of a child protection nature

- 3.29 The Professional Standards Unit will conduct an assessment of all complaints and allegations received that involve a child and make a determination in relation to the appropriate organisational response and any investigative processes required.
- 3.30 Taking all information into consideration, the Professional Standards Unit will:
- a. Make a determination as to whether or not the allegation constitutes an allegation of a child protection nature against a member on duty;
 - b. Make a determination as to whether the allegation may involve misconduct or a breach of discipline that is not of a child protection nature; and
 - c. Make a recommendation as to what immediate action, if any, is to be taken regarding the member concerned.

Investigating an allegation of a child protection nature

- 3.31 The Professional Standards Unit will investigate allegations of a child protection nature that may involve misconduct or a serious breach of discipline.
- 3.32 Allegations that involve low risk and less serious conduct that does not constitute reportable conduct but may involve a breach of discipline shall be referred to the Area Commander for action in accordance with Service Standard 1.1.2 Discipline, and Local management action as appropriate.
- 3.33 Where a Junior Member or an Ordinary/Probationary Member under the age of 18 years is the complainant or respondent in a disciplinary matter that is handled in accordance with Service Standard 1.1.2 Discipline and there is a case to answer in relation to an allegation of a child protection nature, due consideration should be given to the sensitivity of the matter and the appropriate disciplinary authority (ADA) to ensure consistent outcomes in accordance with the age of the member and the sensitivity of the matter. It may be considered appropriate for such matters to be heard before an officer of or above the rank of Superintendent.

Involving a child or young person in an investigation

- 3.34 Children who are involved in an investigation as a complainant, witness or respondent will be provided with sensitive, ongoing support and will be treated fairly, with respect and without discrimination in accordance with Service Standard 1.1.7 Code of Conduct and Ethics and Service Standard 1.1.42 Respectful and Inclusive Workplace.
- 3.35 Children involved in an investigation will be informed of:
- a. their right to be treated fairly and without discrimination or intimidation;
 - a. their right to choose not to be interviewed or give a statement;
 - b. their entitlement to support; and
 - c. the support services available to them, from the NSW RFS and other agencies.
- 3.36 An assessment should be made as to whether it is necessary to interview a child for the purposes of an investigation, particularly where they are an alleged victim, with consideration given to the following factors:
- a. The sufficiency of the available information about the alleged conduct. i.e. Is there sufficient direct evidence about the alleged conduct from an adult witness.
 - b. Whether the child has already been interviewed by an external agency and the NSW RFS has obtained details of the interview.
 - c. The child's age and/or developmental stage or other factors that will impact on the child's ability to provide detailed information about the alleged conduct.
 - d. Whether the child and their parents or caregivers consent to the interview.
 - e. Any other factors that indicate an interview may result in further trauma or be detrimental to the welfare of the child.
- 3.37 Where the decision is made to not interview a child, the decision must be clearly documented and included in the final investigation report.
- 3.38 Parents or caregivers should be notified of an intended interview with a child unless the child is an ordinary member aged 17 years or over and requests that their parents not be advised.
- 3.39 A staff member conducting an interview with a child should ensure that an appropriate support person, with whom the child is comfortable, is present during the interview.
- 3.40 The child and their parents or caregivers, where appropriate, should be informed of the disciplinary or misconduct investigation process and provided with regular progress updates throughout the investigation.
- 3.41 Where a Junior Member or an Ordinary/Probationary Member under the age of 18 years is the respondent in a disciplinary matter that is handled in accordance with Service Standard 1.1.2 Discipline and there is a case to answer, **(not an allegation of child protection nature)**, consideration should be given to appropriate and consistent penalties that are in accordance with their age, experience and any other mitigating circumstances, which may have contributed to the conduct.

Maintaining Confidentiality

- 3.42 Notwithstanding a member's requirement to report a concern or allegation of a child protection nature to the next in charge or the Professional Standards Unit, a member who is made aware of such a concern or allegation must take all reasonable steps to maintain the confidentiality of the identity of all persons involved. This includes; the person/s making the allegation/s; the alleged victim/s, the respondent/s of the allegation/s and any witnesses.
- 3.43 No guarantees of confidentiality should be given to any party as the identity of those people who are involved in or witnessed the alleged conduct may need to be revealed to the respondent to enable the effective investigation of the matter, or to afford procedural fairness during any disciplinary or misconduct action.
- 3.44 A member must ensure that any records relating to an allegation that involves a child are stored in a secure location to maintain the confidentiality of those records.

False or Vexatious allegations

- 3.45 Any member who is found to have made a false or vexatious allegation/complaint may be subject to disciplinary/misconduct action.

Support Services

- 3.46 The NSW RFS is committed to supporting all members, including children, and their immediate families, where a child is involved in an investigation conducted NSW RFS and in particular, where an allegation of a child protection nature is made.
- 3.47 Members involved in an allegation of a child protection nature, including complainants, witnesses and respondents, should be actively supported by supervisory officers to access appropriate support services at every opportunity. The services available to members are:
- Critical Incident Support Services (CISS);
 - Member Assistance Program (MAP); and
 - Chaplaincy Services and Family Support Program.

4 Related documents

- [Children's Guardian Act 2019](#)
- [Children and Young Persons \(Care and Protection\) Act 1998](#)
- [Children and Young Persons \(Care and Protection\) Regulation 2012](#)
- [Child Protection \(Working with Children\) Act 2012](#)
- [Child Protection \(Working with Children\) Regulation 2013](#)
- [Government Sector Employment Act 2013](#)
- [Government Sector Employment Rules 2014](#)
- [Service Standard 1.1.3 Discipline](#)
- [Service Standard 1.1.7 Code of Conduct and Ethics](#)
- [Service Standard 1.1.9 Child Related Activities](#)
- [Service Standard 1.1.21 Stand Down and Removal from Membership, and Notification of Criminal Charges and Convictions](#)
- [Service Standard 1.1.42 Respectful and Inclusive Workplace](#)
- [Service Standard 2.1.5 Child and Youth Participation in NSW RFS Activities](#)
- [Policy P1.1.6 Reporting and Disclosing Serious Offences \(Criminal Charges\) and/or Convictions by Staff Members](#)
- [NSW RFS Youth Participation Manual](#)
- OCG Fact Sheet – Responding to children and young people's disclosures of abuse
- OCG Reportable Conduct Fact Sheet 1– Identifying Reportable Allegations
- OCG Reportable Conduct Fact Sheet 2 – Heads of entities and reportable conduct responsibilities
- OCG Reportable Conduct Fact Sheet 3– Risk Management following a reportable allegation
- OCG Reportable Conduct Fact Sheet 4 – Planning and conducting an investigation
- OCG Reportable Conduct Fact Sheet 5 – Recognising and managing conflicts of interests
- OCG Reportable Conduct Fact Sheet 6 – Keeping Records
- OCG Reportable Conduct Fact Sheet 7 – Disclosing information to children, parents and carers
- OCG Reportable Conduct Fact Sheet 8 – Making a finding of reportable conduct
- NSW Ombudsman – Guidelines for dealing with youth complaints

5 Amendments

AMENDMENT DATE	VERSION NO	DESCRIPTION
14 April 2021	1.0	Initial release