

AFPA Legal Bulletin - ACT

23 November 2007



Legal Representation

AFP sworn members are subjected to the highest professional standards and scrutiny. As we are entrusted to uphold the law and given the power where required to limit or take away a persons liberty, or even life, whilst executing our duties. It is incumbent upon us to meet the publics' expectations of trust.

From time to time members find themselves the subject of internal investigations regarding the way they have allegedly carried out their duties. The majority of these investigations result in unsubstantiated complaints and allegations. In the minority of these matters members may find themselves facing disciplinary action or criminal charges.

AFPA members will be provided with legal advice and where necessary, representation in such matters. The AFPA has its own in house legal team which makes a preliminary assessment of the allegation. After this initial assessment the appointment and funding of an independent legal team maybe granted, which may include the services of a barrister to ensure the member has the best possible representation. The AFPA does not base its decision to fund a matter on the projected cost of the allegation, it bases its decision to fund on the best outcome for the member based on the evidence.

Recently a number of our ACT based staff have found themselves facing criminal charges. I have been contacted a number of times by our members inquiring as to if the members are being effectively represented by the AFPA. I must stress I have not been privy to any of the legal decisions made on behalf of any members facing criminal proceedings nor was I involved in any decisions as to how these matters will be funded or how they will be represented, nor should I. All the decisions relating to legal funding are also made on the basis of advice from solicitors, both internal and external, and in some cases right up to senior counsel barristers, and most importantly on the views and wishes of the member subject to the allegation.

The AFPA, will take on board any recommendations made by the legal advisors appointed to represent our members. This advice is given after assessing all the available evidence the prosecution intends to put before the Court, as is the case with any person facing criminal charges. Any Solicitor or Barrister is duty bound to obtain the best result possible for their client and if this means accepting the evidence is to the required standard to prove the allegation they may recommend a guilty plea and accept any discounts that come with such a plea. Likewise, legal advice may be to defend the matter. Ultimately a decision to plead guilty or not guilty absolutely rests with the accused member and is the complete prerogative of the individual concerned. Police officers charged with criminal offences are no different to any other defendant.

In relation to the three current matters in the ACT, the AFPA has funded one matter were the member pleaded guilty. This matter related to 9 charges of assault and resulted in a suspended

sentence for the member. Two other members have pleaded not guilty and have also been provided legal representation. These matters are currently still before the court. All three members have been provided expert legal advice and representation from very experienced criminal solicitors and senior counsel. This representation has been ongoing right from the outset of the incidents through to the current matters in court.

It is not the role of the AFPA to comment on pending matters, nor should it. Our members deserve the same privacy rights as anyone, even if we as members are funding the legal representations.

You will recall recent public announcements of where the AFPA has successfully defended members through various court proceedings to ensure the members best interests were looked after and comments by the Courts have supported the vigorous defence in these cases.

Remember, if you find yourself in a situation where misconduct or criminal allegations are made against you, you should immediately contact the AFPA or your AFPA Delegate. Your AFPA delegate will forward you through to AFPA Legal where you can outline your position in more detail. When under investigation for criminal matters the Association always advises not to answer any questions under criminal caution without first seeking legal advice.

AFPA CEO Jim Torr has been involved in all of the issues that have emerged from the Watchhouse, right from the outset of the incidents arising, through to the Ombudsman's review and now through to the criminal matters currently before the courts. If any member has concerns over the way our members have been supported through this matter, they can contact him to discuss their concerns.

PRS Investigations

AFPA members have access to the assistance and advice of the AFPA Legal Team in PRS investigations (PRSI). The AFPA Legal Team has considerable experience in the rules and procedures of the PRSI and can also assist in the drafting of submissions and various documentation that relates to the PRSI. Most importantly though, AFPA members have access to representation in the PRS interview. If you are involved in a PRSI, whether a witness to an investigated incident or the subject of the investigation, contact AFPA Legal immediately so we can assess, and assist you through the process.

Will Kits

The AFPA provides free basic will kits to its members and their families. To receive a will kit please contact AFPA Legal to have the will kit emailed to you. In general, basic wills are sufficient for adults and their partners where they have no children or the children are over 18. For complicated wills the AFPA has legal representatives in most capital cities that can provide wills and probate services at reasonable prices.

Gary Shute

ACT Zone Co-ordinator