



# MEMBER UPDATE

## AFPA Industrial Dispatch #19

16 October 2017

Welcome to the AFPA Industrial Dispatch, a regular bulletin to keep our members up to date with significant industrial issues.

### CURRENT SIGNIFICANT ISSUES

#### Outreach visits by AFPA Legal Industrial Team

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The Team commenced outreach visits last Friday, providing one-on-one advice on legal and industrial matters to members at ACT Policing Belconnen, City and Tuggeranong Stations. Members found this concept convenient and informative. Visits to the Woden and Gungahlin Stations and Winchester Police Centre will also be organised before the Christmas break, with visits to state offices planned for the new year.

Notwithstanding our scheduled visits, if you have any legal or industrial matters you would like to discuss, please contact our Team at any time.

#### Recording conversations without consent

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In the context of employment difficulties, it may be tempting to record conversations within the workplace. The *ACT Listening Devices Act 1992* (the Act), prescribes that 'a person must not use a listening device with the intention of recording a private conversation to which the person is a party', without the consent of the other parties to that conversation.

Any recording device, including a mobile phone, used for the purposes of recording a conversation is clearly 'a listening device' for the purposes of the Act.

This can be a difficult area of law to negotiate due to the exception that allows for recording if "the recording of the conversation is considered by that principle party, on reasonable grounds, to be necessary for the protection of that principal party's lawful interests".

What are lawful interests?

There is some case law that suggests that protecting a person's lawful interests can include interests in property. It may be arguable that a lawful interest is a person's interest in retaining their employment, however this has been largely untested. Judicial opinion in another jurisdiction has indicated that the 'desire to gain an advantage in civil proceedings would not usually constitute a lawful interest' for the purposes of recording a private conversation.

It is the AFPA's view that a member should not record, without consent by all relevant parties, a conversation in the workplace. Prima facie, this conduct could amount to an offence being committed. Each Australian State has different legislation pertaining to the recording of private conversations. Many States do not have law that mirrors the ACT provisions so it is useful to check the applicable legislation in your jurisdiction, or seek our advice.

However, even if a criminal offence has not occurred, there may still be sanctions by PRS for a member wilfully recording colleagues, without their knowledge. It is the AFPA's view that members should exercise caution when using listening devices, such as mobile phones, within the workplace.

A safer option, when facing employment issues is to attend any meetings/conversations with a support person present. If your supervisor/management request for you to attend a workplace consultation of any kind, you can reasonably request that any appointment be deferred so a support person can attend with you.

### **Leave without pay**

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If you are about to commence a period of leave without pay, it is important to let the AFPA Administration Team know. This assists us to maintain records and gives us the opportunity to provide an explanation to you of your membership entitlements while on leave without pay. Furthermore, if several membership payments are missed and we are unable to contact you to clarify the reasons, there is a risk your membership could be terminated in accordance with the AFPA Rules. If you are taking leave without pay or have any questions about this, please contact us on 6285 1677.

### **Band 8 review**

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We note the email from National Manager People, Safety and Security on 11 October 2017 regarding a proposed review of Band 8 roles. We have asked the AFP for urgent advice on the rationale behind this review, as many Band 8 and EL members are concerned that operational and organisational consequences have not been thought through.

We will provide an update to members on the progress of our discussions with the AFP. In the meantime, if you have any specific concerns, please contact AFPA Manager Legal and Industrial Vicki Linabury on 02 6285 1677 or [vicki.linabury@afpa.org.au](mailto:vicki.linabury@afpa.org.au).

### **Investigative Assistants Survey**

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Following reports of inconsistencies and other issues within the Investigate Assistant role, the AFPA distributed a survey to Investigative Assistants across the organisation. The results of the survey have been analysed and collated. The AFPA are currently preparing a report, outlining the data gathered by your Association and anonymous feedback from members, in preparation for discussions with the AFP. All affected members and survey participants will be sent a copy of the report upon its completion.

### **INDUSTRIAL QUERIES**

If you have any industrial queries or queries about issues raised in this Dispatch, please contact [sam.delaney@afpa.org.au](mailto:sam.delaney@afpa.org.au) or [sara.gorman@afpa.org.au](mailto:sara.gorman@afpa.org.au).



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