



# MEMBER UPDATE

## AFPA Industrial Dispatch #26 28 March 2018

Welcome to edition 26 of the AFPA Industrial Dispatch, a regular bulletin from the Legal and Industrial Team to keep our members up to date with significant industrial issues.

### CURRENT SIGNIFICANT ISSUES

#### **Comcare and 'reasonable management action'**

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It goes without saying that the working environment for AFP employees is challenging. From time to time, the working environment may require a member to apply for workers' compensation either because of an injury or disease sustained in the course of employment. Increasingly, workers' compensation schemes, including Comcare, are recognising the impact the working environment can have on a worker's mental health. Indeed, this is an encouraging development because in the past mental health was not given due consideration.

However, it is important for members to be aware that the AFP, and indeed other employers, will often rely on 'reasonable management action' as a defence against some applications for compensation. *Reasonable management action* is covered by section 5A(2) of the *Safety Rehabilitation and Compensation Act 1988* and includes employer actions such as performance appraisals, informal/formal counselling, disciplinary action, promotion/transfers, and other similar circumstances. If you are thinking about making an application for workers compensation then it is important that you are aware of the likelihood of the AFP raising this defence, and as such, the likelihood of your claim being accepted.

If you have any questions about workers' compensation and your eligibility or putting together an application, then please contact the Team.

#### **Professional Standards investigations – Annexures to investigation reports**

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A significant amount of our time here is spent on assisting members who are subject to Professional Standards (PRS) investigations. This includes preparing a member for a directed interview, attending the interview, ensuring the member is in contact with support services, and assisting in the drafting of their Natural Justice Response. We often assume that every member subject to a PRS Investigation will contact the AFPA for assistance - realistically though, there could be a number of you who do not seek our assistance. For those of you who do not seek our assistance we recommend that you always ask for

a copy of all of the annexures referred to in an Investigation Report.

In our experience, PRS will not automatically provide you with a copy of the annexures unless you ask for them. We believe that in order to be given a fair and reasonable opportunity to respond to a proposed conduct issue, you should be given these documents. As such, we strongly encourage all members to ask for all annexures when an investigation report is handed down.

### **Independent Selection Advisory Panels (ISAP) – appeals**

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We remind you of the following avenue of appeal for ISAP selection processes. Paragraph 5 of Commissioner's Order 7 states:

5.1 The selection processes followed by an ISAP may be subject to review on the following grounds:

- a) there has been a breach of the application of Regulation 3 of the Regulations; or
- b) there has been a material and significant departure from the selection processes as set out in this Order or the National Guideline.

5.2 A request by an applicant for review of the ISAP selection process must be received within seven (7) calendar days of an applicant being notified, in writing, that the ISAP has made its recommendations. A Delegate's consideration and determination of the ISAP report and recommendations shall not be finalised prior to the conclusion of the review period.

5.3 An application for review of the selection process will operate to stay the process until such time as the Delegate has made a determination of the request for review and advised the applicant of the outcome.

5.4 If the Delegate finds that there has been a material or significant departure from the provisions of this Order or the National Guideline, the Delegate may:

- a) direct the ISAP to take such steps considered necessary to remedy any defect in the selection process; or
- b) if the Delegate considers the defect in the selection process to be so serious as to be without remedy, direct that selection process be abandoned, and the selection process be recommenced with a new ISAP; or
- c) refer the matter to Professional Standards if they suspect an abuse of office or other misconduct has occurred.

If you believe you have grounds to challenge an ISAP process, please get in touch with the Team.

### **Professional Standards Panel**

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The new Professional Standards Panel (PSP) is now in place and will replace the previous PRS Adjudication process. Initially, they will meet on a fortnightly basis.

The panel is made up of NMPSS (Ms Phillipa Crome) as Chair and delegate, NMRCs (Assistant Commissioner Ray Johnson), and additional National Managers, on a rotating basis.

The role of the PSP is to consider the established findings of PRS investigations and includes

consideration of the PRS Investigation Report (IR), the employee's service history, antecedents and the employee's Natural Justice Response (NJR). The NJR is prepared by the employee in response to the IR.

The PSP will discuss the matter and the delegate will propose a sanction or action. At this point, the employee will be given the opportunity to respond to the proposal (14 days), which will be considered again by the Panel at which time the sanction or action will be determined, and the member advised.

If you are going through an investigation or your matter is before the PSP and you would like further advice, please contact the Legal and Industrial team.

## INDUSTRIAL QUERIES

If you have any industrial queries or queries about issues raised in this Dispatch, please contact [anish.prasad@afpa.org.au](mailto:anish.prasad@afpa.org.au), [sam.delaney@afpa.org.au](mailto:sam.delaney@afpa.org.au) or [sharon.wright@afpa.org.au](mailto:sharon.wright@afpa.org.au) or call us on (02) 6285 1677.



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