



# MEMBER UPDATE

## **AFPA Industrial Dispatch #37 21 November 2018**

Welcome to edition 37 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**

#### **Current Litigation - Summary**

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Today we provide you with a summary of a number of matters we have brought before the courts on behalf of our members:

##### *Federal Court Application regarding the validity of clause 67 of the Enterprise Agreement*

The AFPA have lodged an application in the Federal Court regarding the validity of the “Reduction in Classification” clause of the Enterprise Agreement 2017-2020. We are seeking a declaration that the AFP has no power to reduce the classification of an employee due to an established conduct issue.

A hearing date has not been set but is likely to take place in March 2019.

##### *Federal Court Application regarding 3% pay-rise for Band 1-8 AFP appointees*

The AFPA has filed an application in the Federal Court regarding several members who are still being paid their salary in accordance with the expired Enterprise Agreement 2012-2016. This contravenes section 50 of the Fair Work Act.

Sub-section 58(1) of the Fair Work Act provides that only one enterprise agreement can apply to an employee at a particular time. We submit that the AFP’s refusal to grant these members their 3% pay-rise and therefore maintain their salaries in accordance with the expired EA is unlawful.

##### *Fair Work Commission Dispute regarding Air Security Officers*

This dispute relates to the AFP’s refusal to make available the workforce adjustment provision of the EA (clause 56) to Air Security Officers in Melbourne and Sydney who have effectively been made redundant following a restructure in Specialist Response Group. We have asked the Fair Work Commission for a declaration that the AFP has breached the Enterprise Agreement by not invoking clause 56, which is also known as the RRR provision, affording employees Redeployment, Retention or Redundancy rights.

The matter has been listed for hearing on 9 January 2019.

##### *Fair Work Commission Dispute regarding reclassification of employee*

This is another example of an employee whose specialist role has been made redundant in the employee’s work area. The employee has been advised that this is not a workforce adjustment under clause 56 of the EA as another

(at level) vacant position, not in their specialist area, has been offered. It was suggested to the employee that if they do not want this position, they should leave the AFP. This approach by the AFP takes away the employee's rights under the workforce adjustment provisions and removes any choice the employee may have regarding their future in the AFP.

We have made an application in the Fair Work Commission for resolution of this dispute.

#### Fair Work Commission Dispute regarding ASO Allowance being paid to Discreet Operations

The AFPA has made an application to the Fair Work Commission for dispute resolution seeking that the ASO allowance is paid to Discreet Operations members, consistent with clause 35(3)(a) of the Enterprise Agreement and backdated to the commencement of the EA.

It is not clear why the AFP has elected to not pay this allowance since the commencement of the new EA in May 2018 and this lack of clarity and communication has caused the AFPA to seek resolution through the Commission.

#### Federal Court Application regarding statement of reasons for a decision

The AFPA is preparing to file in the Federal Court to compel the AFP to provide a statement of reasons (under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*) for a decision by Professional Standards to establish a conduct issue against a member.

The AFP has denied our request for a section 13 statement of reasons on the basis that the decision to establish a conduct issue is not a decision to which the ADJR Act applies as it is not a standalone decision, but part of a decision-making process that leads to an outcome decision.

#### Unfair Dismissal Application in Fair Work Commission

The AFPA has lodged an unfair dismissal application with the Fair Work Commission on behalf of a member whose employment was terminated earlier this year. Our case relies on the basis that there were no valid reasons for termination; the evidence relied upon by the AFP does not support the establishing the conduct issues; and subsequent evidence provided by our member in defence of the conduct issues were not properly considered.

#### Federal Court Proceedings regarding Maternity Leave

The AFPA has a matter before the Federal Court on behalf of a member relating to discrimination on the grounds of sex and pregnancy. The application relates to members who have taken maternity leave at half pay for over 16 weeks and have had their advancement delayed due to that period of time not being counted as 'service'.

A hearing date has been set for 19 March 2019.

#### **Determination 1 of 2013 Leave Accrual Issue**

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The AFPA recently requested International Operations (IO) for a further update to members affected by the leave accrual issue under Determination 1 between 1 December 2013 – 7 October 2015.

IO advise that they are currently awaiting approval from the AFP Executive and further updates will be provided as soon as there is something relevant to report.

We are confident the Project Team is working toward resolution as quickly as possible.

#### **National Guideline on Uniform and Standard of Dress – Tattoo Exemptions**

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The AFPA recently met with members of the AFP Ceremonial, Protocol & Recognition Team to discuss the criteria for exemption from the tattoo policy.

We were advised that 75% of exemption requests had been accepted on the basis of medical, cultural, or religious reasons.

The members of the AFP Ceremonial, Protocol & Recognition Team told us that members who apply for an exemption are subject to a temporary exemption from covering up their tattoos while they await a decision. This also applies if a member's application for exemption is rejected and the member is seeking a review.

We encourage any members who have not yet applied for an exemption, or had their request denied, to contact the AFPA so we can assist you to write a submission or seek a review.

## INDUSTRIAL QUERIES

If you have any industrial queries or queries about issues raised in this Dispatch, please contact Sharon, Anish, Matt or Sam at [afpa@afpa.org.au](mailto:afpa@afpa.org.au) or call us on (02) 6285 1677.



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