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Australian Federal Police Amendment Regulations 2000 (No. 2)

Statutory Rules 2000 No. 2

138

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian Federal Police Act 1979*.

Dated 21 JUN 2000 2000

WILLIAM DEANE
Governor-General

By His Excellency's Command

AMANDA VANSTONE
Minister for Justice and Customs



Australian Federal Police Amendment Regulations 2000 (No. 2)¹

Statutory Rules 2000 No. 2²

138

made under the

Australian Federal Police Act 1979

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2

1 Name of Regulations

These Regulations are the *Australian Federal Police Amendment Regulations 2000* (No. \surd).

2

2 Commencement

These Regulations commence on the same day as the *Australian Federal Police Legislation Amendment Act 2000* (other than items 34, 47 and 48 of Schedule 2) commences.

3 Amendment of Australian Federal Police Regulations

Schedule 1 amends the Australian Federal Police Regulations.

4 Transitional — definitions

In these Regulations, the following expressions have the same respective meanings as in Part 1 of Schedule 3 of the *Australian Federal Police Legislation Amendment Act 2000*:

- commencing time
- former Act
- former commissioned police officer
- former non-commissioned police officer
- former senior executive commissioned police officer
- former senior executive officer
- former special member
- former staff member
- former temporary employee
- later Act.

5 Transitional — conversion of appointments for a term

- (1) This regulation applies to the following persons:
 - (a) any of the following persons who, before the commencing time, received from the Commissioner written notice that an arrangement of the kind mentioned in subregulation (3) would apply to the person after the commencing time:
 - (i) a former commissioned police officer;
 - (ii) a former non-commissioned police officer;
 - (iii) a former special member;
 - (iv) a former staff member;
 - (b) a former senior executive commissioned police officer;
 - (c) a former senior executive officer.
- (2) However, this regulation does not apply if the person is a former temporary employee.
- (3) Despite item 2 of Schedule 3 to the Act, the person is taken to be engaged, at the commencing time, as an AFP employee under section 24 of the later Act:
 - (a) for a period equal to the part of the person's period of appointment that had not been completed before the commencing time; and
 - (b) under the terms and conditions that applied to the person immediately before the commencing time.

6 Transitional — rank

- (1) This regulation applies to an AFP member if, immediately before the commencing time:
 - (a) the AFP member held a rank; and
 - (b) a declaration, under paragraph 9 (2) (b) of the former Act, was in force in relation to that rank.

Regulation 6

- (2) At the commencing time, the Commissioner is taken to have declared that, for subsections 9 (2A) and (2B) of the later Act, the member continues to hold that rank.
- (3) Subregulation (2) ceases to apply to the AFP member when the Commissioner makes a declaration under subsection 9 (2A) of the later Act.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Australian Federal Police Regulations 1979*.

[2] Regulation 2

substitute

2 Interpretation

In these Regulations:

Act means the *Australian Federal Police Act 1979*.

AFP means Australian Federal Police.

AFP records means the records of the Australian Federal Police.

cost to AFP for use of AFP employee's time, in relation to making an AFP employee available to render a service, means:

- (a) if the employee is made available for a minimum of 4 hours and renders the service for 4 hours or less — the amount of remuneration payable to the employee for 4 hours plus 150.2% of his or her base salary for 4 hours; or
- (b) in any other case — the amount of remuneration payable to the employee for the period when he or she renders the service plus 150.2% of his or her base salary for the period.

Merit Protection Commissioner means the Merit Protection Commissioner appointed under the *Public Service Act 1999*.

remuneration, for an AFP employee, means the base salary and any overtime, penalties and other allowances payable to the employee.

Note The following expressions used in these Regulations are defined in subsection 4 (1) of the Act:

- AFP employee
- commissioned police officer
- Commissioner
- Deputy Commissioner
- duties
- member of the Australian Federal Police
- special member.

[3] **Parts 2, 2A, 3 and 3A**

substitute

Part 2 Employment

Division 2.1 Employment decisions

3 AFP values

Employment decisions in the AFP must be based on the following values:

- (a) impartiality and professionalism;
- (b) merit;
- (c) freedom from discrimination;
- (d) openness and accountability;
- (e) fairness;
- (f) equity in employment;
- (g) effectiveness.

4 Competence and qualifications of commissioned police officers

- (1) A member of the Australian Federal Police is competent and qualified to be a commissioned police officer if the member:
 - (a) is an Australian citizen; and
 - (b) has reached the age of 18 years; and
 - (c) has been certified by a medical practitioner, approved by the Commissioner, to be in good health; and
 - (d) has the experience, qualifications and training required for the effective performance of the duties of a commissioned police officer, as specified by the Commissioner; and
 - (e) having regard to any other factors that are relevant to the performance of the duties of a commissioned police officer, is suitable to be a commissioned police officer.
- (2) However, if the Commissioner considers it appropriate to do so, the Commissioner may recommend that paragraph (1) (a) not apply to a member who is otherwise competent and qualified to be a commissioned police officer.

5 Suspension from duties

- (1) The Commissioner may suspend an AFP employee from duties:
 - (a) if the Commissioner believes on reasonable grounds that the employee:
 - (i) may have committed a disciplinary offence; or
 - (ii) has failed to comply with professional standards; or
 - (b) to allow the employee to contest an election to a non-parliamentary body.

- (2) The Commissioner may also suspend an AFP employee from duties if:
 - (a) the employee is charged with having committed a summary or indictable offence against a law of the Commonwealth, a State, a Territory or another country; and
 - (b) the Commissioner believes that, because of the nature of the offence, the employee should not continue to perform his or her duties until the charge has been determined.
- (3) A suspension is with remuneration.
- (4) However, the Commissioner may direct that suspension be without remuneration.
- (5) The Commissioner must end the suspension if:
 - (a) he or she no longer believes on reasonable grounds that the employee:
 - (i) may have committed a disciplinary offence; or
 - (ii) has failed to comply with professional standards; or
 - (b) the employee fails to be elected to the non-parliamentary body; or
 - (c) if subregulation (2) applies, the employee is found not guilty of the offence with which he or she has been charged.
- (6) The Commissioner must end the suspension if a penalty has been imposed on the employee for the disciplinary offence (unless the offence is a relevant offence within the meaning of subregulation 38 (1) of the *Australian Federal Police (Discipline) Regulations 1979*).

6 Suspension of declarations under section 40B

The Commissioner may, for a specified period of time, suspend a declaration made under section 40B of the Act.

Division 2.2 Conditions of employment

7 Allowances under subsection 20 (2) of the Act

For subsection 20 (2) of the Act, a displacement allowance of \$13 500 a year is prescribed.

8 Undertaking

For paragraphs 36 (2) (a), (3) (a) and (4) (a) of the Act, the undertaking in Form 1 of Schedule 1 is prescribed.

9 Oaths and affirmations

For subsection 36 (1) and paragraphs 36 (2) (b), (3) (b) and (4) (b) of the Act, the oath in Form 2 of Schedule 1 and the affirmation in Form 3 of Schedule 1 are prescribed.

Division 2.3 Election candidates

10 Resignation to contest election

- (1) An AFP employee may resign from the AFP to become a candidate at an election of a member or members of:
 - (a) the Parliament of the Commonwealth or a State; or
 - (b) the Legislative Assembly for the Australian Capital Territory or of the Northern Territory.
- (2) However, the employee may not resign for that purpose earlier than the date of issue of the writ for the election or later than the date on which the nominations for the election close.
- (3) The employee must give the Commissioner, no later than 2 weeks before he or she proposes to resign, notice in writing specifying the day on which he or she proposes to resign.

11 Re-engagement of person who resigns to contest election

- (1) This regulation applies to a person who:
 - (a) resigns from the AFP under regulation 10; and
 - (b) fails to be nominated at the election or, if nominated, fails to be elected at the election; and
 - (c) applies to be re-engaged as an AFP employee within 2 months after the declaration of the result of the election (or, if the result is disputed, within 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses).
- (2) The person must be again engaged as an AFP employee on the same terms and conditions as would apply to the person if the person had not resigned.
- (3) If a declaration under subsection 9 (2A) or (2B), or section 40B or 40D of the Act was in force in relation to the person immediately before the person resigned, then, unless it would have ceased to be in force sooner, the declaration is taken to continue to be in force from the day when the person is again engaged until it would otherwise cease to be in force.
- (4) The period between the person's resignation and the day when the person is again engaged as an AFP employee is to be recognised as service for all purposes.

Division 2.4 Financial matters

12 Financial statements

- (1) A statement given to the Commissioner under subsection 40L (1) of the Act is confidential and the information contained in it must not be disclosed except for the purpose for which it was collected.
- (2) The statement must be stored in a way that ensures confidentiality is maintained.

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- (3) The statement must only be handled:
- (a) by the Commissioner or a person authorised by the Commissioner; and
 - (b) for the purpose for which it was collected.

Note Contravening subsection 40L (3) of the Act is a disciplinary offence under regulation 29 of the *Australian Federal Police (Discipline) Regulations 1979*.

13 Attachment of salaries to satisfy judgment debts

- (1) The AFP may make deductions from the salary of any of the following persons to satisfy a judgment debt:
 - (a) the Commissioner;
 - (b) a Deputy Commissioner;
 - (c) an AFP employee;
 - (d) a special member.
- (2) A fee of \$35 is payable in connection with deductions made for a particular judgment debt.
- (3) The fee is payable by the person to whom the judgment debt is owed.
- (4) For subregulation (1), *judgment debt* includes interest on a judgment debt.

Division 2.5 Miscellaneous

14 Awards for bravery

- (1) For subsection 61 (1) of the Act, the following awards are prescribed:
 - (a) the Commissioner's Commendation for Bravery;
 - (b) the Commissioner's Certificate for Conspicuous Conduct.

-
- (2) For subsection 61 (2) of the Act, the following criteria are prescribed:
- (a) in relation to the Commissioner's Commendation for Bravery — the person has performed in the discharge of his or her duty an act of courage of a high order by consciously placing himself or herself at substantial risk of physical injury;
 - (b) in relation to the Commissioner's Certificate for Conspicuous Conduct — the person has demonstrated outstanding dedication to duty in circumstances demanding tenacity of a high order.

15 Voluntary retirement

- (1) Notice under subsection 31 (1) of the Act must specify a day on which the retirement of the AFP employee is to take effect.
- (2) The day specified in a notice under subsection 31 (1) of the Act must not:
 - (a) be earlier than 14 days after the day on which the notice is given (unless the Commissioner approves a shorter period); or
 - (b) be later than 4 months after the day on which the notice is given.

Part 3 Review of employment decisions

Division 3.1 Retirement due to physical or mental incapacity

16 Application for review

- (1) An AFP employee who has been retired by the Commissioner under subsection 32 (1) of the Act may apply in writing to the Merit Protection Commissioner for review of the decision.

- (2) The application must be made through the Commissioner.
- (3) The application must be received by the Commissioner within 28 days after the employee is notified of the decision.
- (4) The application must state briefly why the review is sought.
- (5) The application does not operate to stay the decision.

17 Notification of review

Within 14 days after receiving an application, the Commissioner must give to the Merit Protection Commissioner:

- (a) the application; and
- (b) any documents relating to the making of the decision.

18 Minimum requirements for conducting review

- (1) The conduct of a review must meet the following minimum requirements:
 - (a) the review must be conducted with due regard to procedural fairness;
 - (b) the review must be conducted in private;
 - (c) the review must be finished as quickly, and with as little formality, as the proper consideration of the matter allows.
- (2) A person appearing before the Merit Protection Commissioner must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

19 Requirement to provide information or documents

- (1) The Merit Protection Commissioner may by written notice require the Commissioner or applicant to give to the Merit Protection Commissioner specified information or documents relevant to the review.
- (2) The Commissioner or applicant must give the information or documents in the way, and at or within the time, stated in the notice.

20 Conduct of review

The Merit Protection Commissioner may:

- (a) review the decision; and
- (b) make a recommendation to the Commissioner in writing about the review; and
- (c) tell the Commissioner in writing of the reasons for the recommendation; and
- (d) give a copy of the recommendation and reasons to the applicant.

21 Exclusion of information

- (1) The Merit Protection Commissioner may exclude information from a copy of recommendation and reasons that is to be given to an applicant, in response to an application for review, if:
 - (a) the recommendation and reasons refer to information of a medical or psychiatric nature; and
 - (b) the Merit Protection Commissioner thinks that the information may be prejudicial to the physical or mental health or well-being of the applicant.
- (2) However, if information is excluded, the Merit Protection Commissioner must tell the applicant in writing:
 - (a) that information has been excluded from the copy of the recommendation and reasons; and

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- (b) if the applicant nominates a medical practitioner for this regulation, the information will be given to the medical practitioner.
 - (3) The Merit Protection Commissioner must give the information to the nominated medical practitioner as soon as possible.

22 Action by Commissioner

- (1) If the Commissioner receives a recommendation under regulation 20, the Commissioner must as soon as possible:
 - (a) consider the recommendation; and
 - (b) confirm or revoke the decision.
- (2) The Commissioner must notify the applicant and the Merit Protection Commissioner, in writing, of the decision made under paragraph (1) (b), and the reasons for it.

23 Exclusion of information

- (1) The Commissioner may exclude information from a copy of decision and reasons that is to be given to an applicant under subregulation 22 (2) if:
 - (a) the decision and reasons refer to information of a medical or psychiatric nature; and
 - (b) the Commissioner thinks that the information may be prejudicial to the physical or mental health or well-being of the applicant.
- (2) However, if information is excluded, the Commissioner must tell the applicant in writing:
 - (a) that information has been excluded from the copy of the decision and reasons; and
 - (b) if the applicant nominates a medical practitioner for this regulation, the information will be given to the medical practitioner.

- (3) The Commissioner must give the information to the nominated medical practitioner as soon as possible.

Division 3.2 Miscellaneous

24 Process for review must exist

- (1) The Commissioner must ensure that a process for reviewing AFP employment decisions exists at all times.
- (2) The process must be at least as favourable to AFP employees and special members as the process set out in the *Australian Federal Police Certified Agreement 1999–2000*, as at 1 July 2000.

[4] Regulation 35
renumber as regulation 25

[5] Regulation 36
renumber as regulation 26

[6] Regulation 36
omit
 regulation 35
insert
 regulation 25

[7] Regulation 37
renumber as regulation 27

[8] Paragraph 37 (a)

omit

Form 6 in Schedule 4

insert

Form 4 in Schedule 1

[9] Paragraph 37 (b)

omit

Form 7

insert

Form 5

[10] Part 5, heading

substitute

Part 5 AFP property matters

[11] Regulations 38, 39, 39AA, 39AB, 39A, 40, 40A, 40B, 41, 42 and 42B

omit

[12] Regulation 43

renumber as regulation 28

[13] Subregulation 43 (1)

substitute

- (1) A person who ceases to be a Deputy Commissioner, an AFP employee or a special member must, as soon as it is reasonably practicable to do so, return to the Commissioner all property (including accoutrements

and clothing), other than prescribed property, that has been supplied to the person for the purposes of his or her service as a Deputy Commissioner, AFP employee or a special member or that is in his or her custody because of that service.

Penalty: 5 penalty units.

[14] Subregulation 43 (3)

omit each mention of

he

insert

he or she

[15] Subregulation 43 (4)

substitute

(4) In this regulation:

prescribed property, in relation to a person to whom subregulation (1) applies, means property that the Commissioner has, by a determination in writing in force at the time the subregulation applies to the person, determined is not required to be returned to the Commissioner by:

- (a) the person; or
- (b) a class of persons that includes the person; or
- (c) all persons to whom subregulation (1) applies.

[16] Regulation 44

omit

[17] Regulation 45*substitute***29 Return of claimable property**

- (1) This regulation applies to property, including liquid property, lawfully held by the AFP, except property that:
 - (a) is owned or is held, under any other rights to possession, by the AFP; or
 - (b) has been seized by the AFP; or
 - (c) is held for evidentiary use in legal proceedings.
- (2) Property may be claimed:
 - (a) before it is presented for auction or is otherwise disposed of — by the person entitled to possession of the property; or
 - (b) if there is a finder of the property — by the finder, only if:
 - (i) the person entitled to possession has not claimed it within 3 months after the date it came into the custody of the AFP; and
 - (ii) the claim is made within 1 month of the end of the period mentioned in subparagraph (i).
- (3) Before releasing the property to a person claiming entitlement (or to the person's authorised agent), the Commissioner must be satisfied that the person has a valid entitlement.
- (4) If there are competing claims under subregulation (2), the AFP will respond to a claim that is supported by a court order identifying the claimant as the person entitled to the property.
- (5) On the application of any person (including the AFP), a court may make an order that any property to which subregulation (4) applies be returned to the person entitled to possession.

-
- (6) If property is released to a person in accordance with this regulation, any other person who has an interest in the property has no right of action against the AFP in relation to that interest.
- (7) Liquid property that is unclaimed becomes public money within the meaning of the *Financial Management and Accountability Act 1997*.
- Note* See the *Financial Management and Accountability Act 1997* for how public money is dealt with.
- (8) In this regulation:
liquid property includes money and negotiable instruments, but does not include property:
- (a) to which regulation 31 applies; or
 - (b) that has a collectable value.

Example

Property that has a collectable value could include a rare coin, a proof set of coins, a coin collection, a rare currency note or a collection of currency notes, the face value of which is less than its market value.

30 Disposal of unclaimed property

- (1) This regulation applies to property to which regulation 29 applies, if:
- (a) the Commissioner is satisfied that reasonable action has been taken to tell the person entitled to possession of the property that the AFP has custody of the property and intends to dispose of it if it is not claimed under regulation 29; and
 - (b) it has not been claimed under regulation 29 by the person entitled to possession or by the finder.
- (2) The Commissioner, if satisfied that the property is suitable for disposal by public auction, may so dispose of it.

-
- (3) The Commissioner may direct that the property be disposed of by appropriate means (otherwise than by public auction) if it is property of any of the following kinds:
- (a) keys;
 - (b) goods the sale price of which at auction is not likely to cover the cost of disposal;
 - (c) films, books, pictures or other material depicting violence or sexual activity.
- (4) The Commissioner may, if satisfied that it is in the interest of public health and safety to do so, direct that the property be disposed of by appropriate means (otherwise than by public auction) if it is property of any of the following kinds:
- (a) animals;
 - (b) perishable goods;
 - (c) goods that are, or could be, dangerous or noxious.

31 Return or disposal of exhibits

- (1) This regulation applies to property lawfully held by the AFP, being property:
- (a) seized by the AFP; or
 - (b) held for evidentiary use in legal proceedings.
- (2) Subject to any other law of the Commonwealth, or an order of a court, the Commissioner must ensure that the property is returned to the person entitled to possession when the reason for its detention has no further effect.
- Note* See, for example, the *Proceeds of Crime Act 1987*.
- (3) However, if the Commissioner is satisfied that the person entitled to possession of the property cannot be located or does not want the property, the Commissioner may direct that the property (unless it is liquid property within the meaning of subregulation 29 (8)) be disposed of in accordance with subregulation 30 (2), (3) or (4), as appropriate.

32 Notice of, and proceeds of, sale of property

- (1) For the purposes of disposal of property by public auction, under regulations 30 and 31, the Commissioner must publish a notice of the proposed sale of unclaimed property by public auction:
 - (a) at least 7 days before the expected date of the auction; and
 - (b) in a daily newspaper circulating generally in the State or Territory in which the auction is to be held.
- (2) The proceeds of the sale constitute public money within the meaning of the *Financial Management and Accountability Act 1997*.
- (3) After disposal of the property under regulation 30 or 31, a person who has an interest in the property before the disposal has no right of action against the Commonwealth in relation to that interest.

Note See the *Financial Management and Accountability Act 1997* for how public money is dealt with.

[18] After regulation 45

insert

Part 6 Miscellaneous**33 Delegation**

The Commissioner may in writing delegate any of his or her powers under these Regulations to:

- (a) a Deputy Commissioner; or
- (b) an AFP employee; or
- (c) a special member.

[19] Regulation 46

renumber as regulation 34

[20] Paragraph 46 (a)

omit

Schedule 6; and

insert

Schedule 2; and

[21] Regulation 48

renumber as regulation 35

[22] Subregulations 48 (1) and (2)

omit

regulation 46

insert

regulation 34

[23] Regulation 49

omit

[24] Schedule 4, heading

substitute

Schedule 1 Forms

(regulations 8, 9 and 27)

[25] Schedule 4, Form 1

substitute

Form 1 Undertaking

(regulation 8)

Australian Federal Police Act 1979

UNDERTAKING BY MEMBER OR SPECIAL MEMBER

I, _____, undertake that I will, in the performance of my duties as a member*/special member* of the Australian Federal Police, comply with the provisions of the *Australian Federal Police Act 1979*, the regulations made under that Act, the Commissioner's Orders issued under section 38 of that Act and any lawful direction, instruction or order, whether written or oral, under section 40 of that Act.

* Delete if not applicable.

[26] Schedule 4, Form 2

omit

(subregulation 13 (1))

insert

(regulation 9)

[27] Schedule 4, Form 3

omit

(subregulation 13 (1))

insert

(regulation 9)

[28] Schedule 4, Forms 4 and 5

omit

[29] **Schedule 4, Form 6, heading**

substitute

**Form 4 Warrant under subsection 12G (2)
of the Act in relation to a particular
person**

(paragraph 27 (a))

[30] **Schedule 4, Form 7, heading**

substitute

**Form 5 Warrant under subsection 12G (4)
of the Act in relation to particular
premises**

(paragraph 27 (b))

[31] **Schedule 5**

omit

[32] **Schedule 6, heading**

substitute

Schedule 2 Fees

(regulation 34)

[33] **Schedule 6, items 18 and 19**

omit

Member (including staff member)

insert

AFP employee

[34] Schedule 6, items 18 and 19*omit*

member's time

insert

AFP employee's time

[35] Schedule 6, item 20*substitute*

20 Training or lecturing, by an AFP employee, other than training or lecturing for community purposes

Cost to AFP for use of AFP employee's time

[36] Schedule 6, items 21, 22 and 24*omit*

Member (including staff member)

insert

AFP employee

[37] Schedule 6, items 21, 22, 23, 24, 26 and 28*omit*

member's time

insert

AFP employee's time

[38] Schedule 6, note*substitute*

Note *Cost to AFP for use of AFP employee's time* is defined in regulation 2.

Notes

1. These Regulations amend Statutory Rules 1979 No. 210, as amended by 1980 No. 140; 1981 Nos. 161 and 192; 1982 Nos. 199 and 282; 1983 No. 158; 1984 Nos. 164, 296 (as amended by 1985 No. 82) and 297; 1985 Nos. 82 and 293; 1986 No. 299; 1987 No. 14; 1988 Nos. 83, 84 and 363; 1989 Nos. 1, 139, 343, 344, 361 and 362; 1990 Nos. 23, 87, 273 and 409; 1992 No. 298; 1993 No. 60; 1994 No. 113; 1995 No. 324; 1996 Nos. 171 and 330; 1997 No. 375; 1998 No. 232~~x~~
2. Made by the Governor-General on L 2000, and notified in
the *Commonwealth of Australia Gazette* on L 2000.

; 2000 No. 137

21 June
28 June