

Attorney-General's Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1) 2004 No. 221

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 221

Issued by the authority of the Minister for Justice and Customs

Australian Federal Police Act 1979
Jury Exemption Act 1965
Privacy Act 1988
Public Order (Protection of Persons and Property) Act 1971

Attorney-General's Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1)

The purpose of the Regulations is to make technical amendments to a range of regulations in the Attorney-General's portfolio as a consequence of the introduction of the *Australian Federal Police and Other Legislation Amendment Act 2004*. The object of this Act is to integrate the Australian Protective Service with the Australian Federal Police, and to repeal the *Australian Protective Service Act 1987*. This Act received the Royal Assent on 22 June 2004, and the substantive parts of that Act dealing with integration commenced either expressly through, or as a result of, a Proclamation made on 24 June 2004.

Following the Cornall Review in 2001, the Australian Government determined that the Australian Protective Service should transfer from the Attorney-General's Department and become an operating division of the Australian Federal Police. Integration ensures the closest possible coordination between two of Australia's key counter terrorist organisations. It further consolidates and enhances national security initiatives that have been implemented following the terrorist attacks in the United States and Bali.

The regulations amended, and the regulation-making powers for each, are as follows:

- The *Australian Federal Police Regulations 1979* and the *Australian Federal Police (Discipline) Regulations 1979*:

Section 70 of the *Australian Federal Police Act 1979* provides, in part, that "the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed, for securing the discipline and good government of the Australian Federal Police, or for otherwise carrying out or giving effect to this Act".

- The *Jury Exemption Regulations 1987*:

Subsection 4(2) of the *Jury Exemption Act 1965* provides that the Governor-General may make regulations for or in relation to exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, specified in the regulations from liability to serve as a juror: in Federal courts; in Federal courts exercising jurisdiction in a specified State or Territory; or in the courts of a specified Territory; and exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, specified in the regulations from liability to serve as a juror in the courts of the States or in the courts of a specified State.

- The *Privacy (Private Sector) Regulations 2001*:

Subsection 100(1) of the *Privacy Act 1988* provides that "the Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act".

- The *Public Order (Protection of Persons and Property) Regulations 1999*.

Section 13H of the *Public Order (Protection of Persons and Property) Act 1971* provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed for the purposes of Part IIA of that Act, or necessary or convenient to be prescribed for carrying out or giving effect to Part IIA of that Act, and, in particular, providing for the dealing with information given by a person in response to a requirement made under Part IIA of that Act. Part IIA of the *Public Order (Protection of Persons and Property) Act 1971* relates to the security of certain federal courts and tribunals.

The Regulations, among other things:

- delete references to "protective service officer within the meaning of the *Australian Protective Service Act 1987*" and replace them with references to "protective service officer of the Australian Federal Police";
- delete references to the "Australian Protective Service" and replace them with references to the "Australian Federal Police"; and
- delete references to the "*Australian Protective Service Act 1987*" and replace them with references to the "*Australian Federal Police Act 1979*".

Details of the *Attorney-General's Legislation Amendment (Australian Protective Service) Regulations* are set out in [Attachment](#).

ATTACHMENT

Details of the *Attorney-General's Legislation Amendment (Australian Protective Service) Regulations 2004 (No. 1)*

Regulation 1

Regulation 1 prescribes how the regulations are to be cited.

Regulation 2

Regulation 2 provides that the regulations commence on the date of their notification in the *Gazette*.

Regulation 3

Regulation 3 provides that Schedule 1 amends the *Australian Federal Police Regulations 1979* (AFP Regulations).

Regulation 4

Regulation 4 provides that Schedule 2 amends the *Australian Federal Police (Discipline) Regulations 1979* (Discipline Regulations).

Regulation 5

Regulation 5 provides that Schedule 3 amends the *Jury Exemption Regulations 1987*.

Regulation 6

Regulation 6 provides that Schedule 4 amends the *Privacy (Private Sector) Regulations 2001*.

Regulation 7

Regulation 7 provides that Schedule 5 amends the *Public Order (Protection of Persons and Property) Regulations 1999*.

Schedule 1 - Amendments of *Australian Federal Police Regulations 1979*

Item 1

Item 1 substitutes the note in Regulation 2 of the AFP Regulations to include references to "special protective service officer" as an expression used in the AFP Regulations which is defined in subsection 4(1) of the *Australian Federal Police Act 1979* (AFP Act).

Item 2

Item 2 omits "(3)(a) and (4)(a)" in Regulation 8 and inserts "(3)(a), (4)(a), (4A)(a) and (4B)(a)". A Deputy Commissioner, member and special member are required to enter into an undertaking under paragraphs 36(2)(a), 36(3)(a) and 36(4)(a). Protective service officers and special protective service officers of the Australian Federal Police are also required to enter into an undertaking under paragraphs 36(4A)(a) and 36(4B)(a) of the AFP Act. Regulation 8 provides for the undertaking in Form 1 of Schedule 1 to be prescribed for these purposes.

Item 3

Item 3 omits "For subsection 36(1)" in Regulation 9 and inserts "(1) For subsection 36(1)". This is a technical amendment required to allow for the insertion of new subregulation 9(2) (see Item 4).

Item 4

Item 4 inserts new subregulation 9(2) to provide that the oath in Form 3A of Schedule 1 and the affirmation in Form 3B of Schedule 1 are prescribed for the purposes of paragraphs 36(4A)(b) and 36(4B)(b) of the AFP Act, which provide that a person who is declared to be a protective service officers and special protective service officers must make and subscribe an oath or affirmation.

Item 5

Item 5 inserts a reference to "a special protective service officer." in subregulation 13(1). Subregulation 13(1) provides that the AFP may make deductions from the salary of specified persons who are employed within the AFP. A "special protective service officer" is another category of person who may be employed within the AFP. Specific reference to "protective service officer" is not required as these officers are included in the definition of "AFP employee" in subsection 4(1) of the AFP Act.

Item 6

Item 6 substitutes a new subregulation 28(1) to include reference to "special protective service officer" as another of the specified persons who must return property to the Commissioner in the event that the person ceases to be a "special protective service officer". Specific reference to "protective service officer" is not required as these officers are included in the definition of "AFP employee" in subsection 4(1) of the AFP Act.

Item 7

Item 7 omits "Schedule 6" in subregulation 34(2) and inserts "Schedule 2". There is no Schedule 6 in these Regulations and this amendment will correct this typographical error.

Items 8 and 9

Item 8 omits the heading of Form 1 in Schedule 1 and inserts a new heading for the undertaking in Form 1. The new title reflects that this undertaking relates to the performance of duties by members, special members, protective service officers and special protective services officers of the AFP.

Item 9 omits reference to "member*/special member*" and inserts "*member/*special member/*protective service officer/*special protective service officer" in the body of the undertaking.

Items 10 and 11

Item 10 substitutes the heading for Form 2 in Schedule 1 to make it clear that this Oath is only for members or special members under subregulation 9(1).

Item 11 substitutes the heading for Form 3 in Schedule 1 to make it clear that this Affirmation is only for members or special members under subregulation 9(1).

Item 12

Item 12 inserts new Forms 3A and 3B in Schedule 1. Form 3A is the Oath for protective service officers or special protective service officers and Form 3B is the Affirmation for protective service officers and special protective service officers under subregulation 9(2) (see Item 4). This Oath and Affirmation are the same as those that were provided for in the Schedule to the Australian Protective Service Regulations.

Schedule 2 - Amendments of *Australian Federal Police (Discipline) Regulations 1979*

Item 1

Item 1 inserts a definition of "AFP appointee" in Regulation 2 of the Discipline Regulations. Under the new definition "AFP appointee" means "an AFP employee, a special member or a special protective service officer" for the purposes of the Discipline Regulations. This expression has been adopted for use in the Discipline Regulations to make the provisions clear and aid readability.

Item 2

Item 2 substitutes the note in Regulation 2 to include reference to "protective service functions", "protective service officer" and "special protective service officer" as expressions used in the Discipline Regulations, which are defined in the AFP Act.

Items 3 and 4

Items 3 and 4 substitute new headings to Part 2 of the Discipline Regulations and to Regulation 7 to replace references to "AFP employee or special member" with the term "AFP appointee".

Item 5

Item 5 substitutes Regulation 8 to provide for "a protective service officer" and "a special protective service officer" to be specified persons who may be issued with a firearm and that a firearm issued to the specified persons must not be used except as authorised by Commissioner's Orders.

Item 6

Item 6 substitutes a new heading to Regulation 10 to replace the reference to "AFP employee or special member" with "AFP appointee".

Item 7

Item 7 substitutes new subregulation 10(2) to provide for "a protective service officer" and "a special protective service officer" to be specified persons who must not enter restricted premises while in uniform or wearing a distinctive part of the uniform. Item 7 also substitutes new subregulation 10(3) to replace references to "employee or a special member" with "AFP appointee".

Item 8

Item 8 substitutes Regulations 11, 12 and 13. New Regulation 11 makes reference to "protective service functions" as well as "police services", and includes reference to "AFP appointee". New Regulations 12 and 13 replace references to "AFP employee or a special member" and "employee or special member" with "AFP appointee".

Item 9

Item 9 substitutes the heading to Regulation 15 to replace reference to "AFP employee or special member" with "AFP appointee".

Item 10

Item 10 substitutes Regulation 29 in relation to disciplinary offences for AFP appointees. The new Regulation clarifies the disciplinary offences for persons employed with the AFP.

Items 11 and 12

Items 11 and 12 replace references to paragraph 29(g) with references to paragraph 29(1)(e) in subregulation 31(1B) and subregulation 36(2) as a consequence of the amendment to Regulation 29 (see Item 10).

Item 13

Item 13 amends a number of other provisions in the Discipline Regulations to replace references to "AFP employee or a special member", "employee or special member" and other similar references with "AFP appointee".

Schedule 3 - Amendments of *Jury Exemption Regulations 1987*

Item 1

Item 1 substitutes subparagraph 5(2)(b)(iii) and inserts "(iv) the Federal Magistrates Court". Regulation 5 provides for exemptions of certain persons from service as a juror. This amendment includes officers or employees of the Federal Magistrates Court as persons who are exempt from service as a juror.

Item 2

Item 2 replaces a reference to "section 26B" with a reference to "section 24" in paragraph 5(2)(g) to correct a technical error. Section 26B of the AFP Act was repealed by the *Australian Federal Police Legislation Amendment Act 2000* and AFP employees are now engaged under section 24 of the AFP Act.

Item 3

Item 3 omits paragraph 5(2)(i), which refers to "the Director, within the meaning of the *Australian Protective Service Act 1987*". This employee is now an AFP employee within the meaning of the AFP Act and will be exempt from service as a juror under paragraph 5(2)(g). The *Australian Protective Service Act* has been repealed.

Schedule 4 - Amendment of *Privacy (Private Sector) Regulations 2001*

Item 1

Item 1 omits item 48, "Australian Protective Services", from the list of agencies in Schedule 2. This is a technical amendment due to the integration of the Australian Protective Service with the AFP. The AFP is included at item 21 of Schedule 2.

Schedule 5 - Amendment of *Public Order (Protection of Persons and Property) Regulations 1999*

Item 1

Proposed Item 1 omits paragraph 8(1)(a), which lists the Australian Protective Service as an organisation to which an authorised officer may disclose information. This is a technical amendment due to the integration of the Australian Protective Service with the AFP.