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

Statutory Rules 2004 No. λ ²

221

I, PHILIP MICHAEL JEFFERY, 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*, the *Jury Exemption Act 1965*, the *Privacy Act 1988* and the *Public Order (Protection of Persons and Property) Act 1971*.

Dated 21 JUL 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON
Minister for Justice and Customs

	Page
Contents	
1 Name of Regulations	3
2 Commencement	3
3 Amendment of <i>Australian Federal Police Regulations 1979</i>	3
4 Amendment of <i>Australian Federal Police (Discipline) Regulations 1979</i>	3
5 Amendment of <i>Jury Exemption Regulations 1987</i>	3
6 Amendment of <i>Privacy (Private Sector) Regulations 2001</i>	3
7 Amendment of <i>Public Order (Protection of Persons and Property) Regulations 1999</i>	3
Schedule 1 Amendments of Australian Federal Police Regulations 1979	4
Schedule 2 Amendments of Australian Federal Police (Discipline) Regulations 1979	8
Schedule 3 Amendments of Jury Exemption Regulations 1987	18
Schedule 4 Amendment of Privacy (Private Sector) Regulations 2001	19
Schedule 5 Amendment of Public Order (Protection of Persons and Property) Regulations 1999	20

1 Name of Regulations

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

2 Commencement

These Regulations commence on the date of their notification in the *Gazette*.

3 Amendment of Australian Federal Police Regulations 1979

Schedule 1 amends the *Australian Federal Police Regulations 1979*.

4 Amendment of Australian Federal Police (Discipline) Regulations 1979

Schedule 2 amends the *Australian Federal Police (Discipline) Regulations 1979*.

5 Amendment of Jury Exemption Regulations 1987

Schedule 3 amends the *Jury Exemption Regulations 1987*.

6 Amendment of Privacy (Private Sector) Regulations 2001

Schedule 4 amends the *Privacy (Private Sector) Regulations 2001*.

7 Amendment of Public Order (Protection of Persons and Property) Regulations 1999

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

2004, /
/

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

3

221
1

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

(regulation 3)

[1] **Regulation 2, note**

substitute

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
- special protective service officer.

[2] **Regulation 8**

omit

(3) (a) and (4) (a)

insert

(3) (a), (4) (a), (4A) (a) and (4B) (a)

[3] **Regulation 9**

omit

For subsection 36 (1)

insert

(1) For subsection 36 (1)

[4] Regulation 9

insert

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

[5] Paragraph 13 (1) (d)

substitute

- (d) a special member;
(e) a special protective service officer.

[6] Subregulation 28 (1), including the penalty

substitute

- (1) A person who ceases to be a Deputy Commissioner, an AFP employee, a special member or a special protective service officer 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 in the AFP or that is in his or her custody because of that service.

Penalty: 5 penalty units.

[7] Subregulation 34 (2)

omit

Schedule 6

insert

Schedule 2

[8] Schedule 1, Form 1

omit

UNDERTAKING BY MEMBER OR SPECIAL MEMBER

insert

UNDERTAKING RELATING TO PERFORMANCE OF
DUTIES

[9] Schedule 1, Form 1

omit

member*/special member*

insert

*member/*special member/*protective service officer/*special
protective service officer

[10] Schedule 1, Form 2, heading

substitute

Form 2 Oath for member or special member

(subregulation 9 (1))

[11] Schedule 1, Form 3, heading

substitute

**Form 3 Affirmation for member or special
member**

(subregulation 9 (1))

[12] Schedule 1, after Form 3*insert***Form 3A Oath for protective service officer or special protective service officer**

(subregulation 9 (2))

I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will faithfully and diligently exercise and perform all my powers and duties as a protective service officer (*or* special protective service officer) of the Australian Federal Police without fear or favour, affection or ill will, from this date until I cease to be such a protective service officer (*or* special protective service officer), and that, while I continue to be a protective service officer (*or* special protective service officer) of the Australian Federal Police, I will, to the best of my skill and knowledge, faithfully discharge all my duties according to law:

So help me God!

Form 3B Affirmation for protective service officer or special protective service officer

(subregulation 9 (2))

I, _____, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will faithfully and diligently exercise and perform all my powers and duties as a protective service officer (*or* special protective service officer) of the Australian Federal Police without fear or favour, affection or ill will, from this date until I cease to be such a protective service officer (*or* special protective service officer) and that, while I continue to be a protective service officer (*or* special protective service officer) of the Australian Federal Police, I will, to the best of my skill and knowledge, faithfully discharge all my duties according to law.

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

(regulation 4)

[1] **Regulation 2, after definition of Act**

insert

AFP appointee means an AFP employee, a special member or a special protective service officer.

[2] **Regulation 2, note**

substitute

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

- AFP employee
- blood test
- body sample
- breath test
- commissioned police officer
- Commissioner
- Commissioner's Orders
- Deputy Commissioner
- duties
- member of the Australian Federal Police
- prohibited drug
- prohibited drug test
- protective service functions
- protective service officer
- senior executive AFP employee
- special member
- special protective service officer.

[3] Part 2, heading

substitute

Part 2 Conduct of AFP appointees

[4] Regulation 7, heading

substitute

7 Property in the possession of AFP appointee

[5] Regulation 8

substitute

8 Use of firearms

- (1) This regulation applies to each of the following persons:
 - (a) a member of the Australian Federal Police (other than the Commissioner or a Deputy Commissioner);
 - (b) a special member;
 - (c) a protective service officer;
 - (d) a special protective service officer.
- (2) If the person is issued with a firearm, the person must not use the firearm except as authorised by Commissioner's Orders.

[6] Regulation 10, heading

substitute

10 AFP appointee not to drink, take drugs or be on licensed premises

[7] Subregulations 10 (2) and (3)

substitute

- (2) The following persons must not, without good cause, enter any restricted premises while in uniform or wearing a distinctive part of the uniform:
 - (a) a member of the Australian Federal Police (other than the Commissioner or a Deputy Commissioner);
 - (b) a special member;
 - (c) a protective service officer;
 - (d) a special protective service officer.
- (3) If an AFP appointee thinks that another AFP appointee under his or her control, direction or supervision is, because of having drunk alcohol or taken any drug, incapable of performing his or her duties efficiently, the first-mentioned AFP appointee must immediately suspend that AFP appointee from duty and report the matter to a senior executive AFP employee.

[8] Regulations 11, 12 and 13

substitute

11 Intentionally prejudicing police services or protective service functions

An AFP appointee must not, with the intention of prejudicing police services or protective service functions, do either of the following:

- (a) fail to give prompt attention to his or her duties;
- (b) be absent from duty without authority.

12 Information — unauthorised disclosure, use or access

- (1) If:
 - (a) a complaint or allegation has been made by any person that an AFP appointee has committed a disciplinary offence; or

-
- (b) an investigation is being carried out in relation to such a complaint or allegation;
another AFP appointee must not, without lawful authority or excuse, disclose or take any action that brings, or is intended to bring, to the notice of that AFP appointee or any other AFP appointee that the complaint or allegation has been made or that the investigation is being carried out.
- (2) An AFP appointee must not, except in the performance of his or her duties:
- (a) use or communicate to another person any information that comes to the AFP appointee's knowledge, or into his or her possession, by reason of being an AFP appointee; or
 - (b) obtain access to information by reason of being an AFP appointee.
- (3) For the purposes of paragraph (2) (b), an AFP appointee is taken to have obtained access to information even if:
- (a) the information is not in the possession, or under the control, of the Australian Federal Police; or
 - (b) whether or not paragraph (a) applies — the information consists of a computer program or part of a computer program, or is otherwise stored in, or entered or copied into, a computer.

13 AFP appointee not to solicit or receive gifts

An AFP appointee must not directly or indirectly solicit or accept a gift or gratuity from a person concerned directly or indirectly with any matter in which the Australian Federal Police, or the AFP appointee, in the performance of his or her duties, is interested or concerned.

[9] Regulation 15, heading

substitute

15 Bankrupt AFP appointee

[10] Regulation 29

substitute

29 Disciplinary offences — AFP appointees

- (1) An AFP appointee commits a disciplinary offence if:
- (a) he or she engages in improper conduct as set out in regulation 9; or
 - (b) he or she fails to comply with any other provision of Part 2; or
 - (c) he or she fails to comply with a Commissioner's Order; or
 - (d) he or she fails to comply with section 40 of the Act; or
 - (e) he or she is charged before a court with an offence against a law of the Commonwealth, a State, a Territory or another country and the charge is proved to the satisfaction of the court, whether or not the court convicts the appointee.

Note Section 40 of the Act deals with specific directions, instructions and orders.

- (2) An AFP employee or a special member commits a disciplinary offence if:
- (a) he or she fails to comply with subsection 40L (3) of the Act; or
 - (b) he or she fails to comply with subsection 40M (3) or 40N (5) of the Act.

Note 1 Subsection 40L (3) of the Act specifies the time limit for giving the Commissioner a financial statement.

Note 2 Subsections 40M (3) and 40N (5) of the Act specify that an AFP employee or special member must comply with a direction to undergo a drug test.

[11] Subregulation 31 (1B)

omit

paragraph 29 (g).

insert

paragraph 29 (1) (e).

[12] Subregulation 36 (2)

omit

paragraph 29 (g).

insert

paragraph 29 (1) (e).

[13] Further amendments — references to AFP appointees

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Regulations 3, 4, 5, 6 and 7 and subregulation 9 (1)	AFP employee or a special member	AFP appointee
Paragraph 9 (1) (a)	employee or a special member, as the case may be,	AFP appointee
Paragraph 9 (1) (c)	employee, special member	AFP appointee
Paragraph 9 (1) (d)	employee or special member	AFP appointee
Subregulations 10 (1) and 14 (1)	AFP employee or a special member	AFP appointee
Paragraph 14 (1) (d)	employee or a special member.	AFP appointee.
Subregulations 14 (2) and (3)	employee or a special member	AFP appointee
Regulation 15 and paragraph 30 (1) (b)	AFP employee or a special member	AFP appointee
Paragraph 30 (1) (b)	AFP employee or special member	AFP appointee
Subregulation 31 (1)	AFP employee or a special member	AFP appointee
Subregulation 31 (1)	employee or special member	AFP appointee
Subregulation 31 (1A)	employee or a special member	AFP appointee

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 31 (1A)	employee or special member	AFP appointee
Subregulation 31 (1B)	employee or a special member	AFP appointee
Subregulation 31 (1C)	employee or special member.	AFP appointee.
Subregulation 31 (1D)	employee or a special member	AFP appointee
Subregulation 31 (1D)	employee or special member	AFP appointee
Subregulation 31 (2)	employee or a special member	AFP appointee
Paragraphs 31 (2) (c) and (d), subparagraphs 31 (2) (d) (i) and (ii) and paragraph 31 (2) (e)	employee or special member	AFP appointee
Subregulation 31 (2A)	employee or a special member	AFP appointee
Subregulation 31 (2A)	employee or special member	AFP appointee
Subregulation 31 (3)	employee or a special member	AFP appointee
Subregulation 31 (3) and paragraph 31 (4) (b)	employee or special member	AFP appointee
Subregulation 31 (4A)	employee or a special member,	AFP appointee,
Subregulation 31 (4A) and paragraph 31 (5) (b)	employee or special member,	AFP appointee,
Paragraph 31 (5) (b)	employee or special member	AFP appointee
Subregulation 32 (1)	AFP employee or a special member	AFP appointee
Subregulations 32 (1) and (2)	employee or special member	AFP appointee

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 32 (4)	employee or a special member	AFP appointee
Paragraphs 32 (4) (e) and (f)	employee or special member	AFP appointee
Paragraph 32 (4) (f)	employee or special member;	AFP appointee;
Subregulation 32 (5)	employee or a special member	AFP appointee
Subregulation 32 (5)	employee or special member	AFP appointee
Paragraphs 33 (1) (a) and (b)	AFP employee or a special member	AFP appointee
Subregulation 33 (1)	employee or special member	AFP appointee
Subregulation 33 (1)	employee or special member.	AFP appointee.
Subregulation 33 (1A)	employee or a special member,	AFP appointee,
Subregulation 33 (1A)	employee or special member.	AFP appointee.
Subregulation 33 (2)	employee or a special member	AFP appointee
Paragraphs 33 (2) (c) and (d), subparagraphs 33 (2) (d) (i) and (ii) and paragraph 33 (2) (e)	employee or special member	AFP appointee
Subregulation 33 (3)	employee or a special member	AFP appointee
Subregulation 33 (3)	employee or special member	AFP appointee
Paragraphs 34 (1) (a) and (b)	AFP employee or special member	AFP appointee
Subregulation 34 (2)	employee or special member	AFP appointee

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 34 (4)	employee or a special member	AFP appointee
Paragraphs 34 (4) (e) and (f)	employee or special member	AFP appointee
Paragraph 34 (4) (f)	employee or special member;	AFP appointee;
Subregulation 34 (5)	employee or a special member	AFP appointee
Subregulation 34 (5)	employee or special member	AFP appointee
Subregulation 35 (1)	AFP employee or a special member	AFP appointee
Subparagraphs 35 (1) (a) (i) and (ii)	employee or special member	AFP appointee
Subparagraph 35 (1) (a) (ii)	employee or special member;	AFP appointee;
Paragraph 35 (1) (a)	employee or special member	AFP appointee
Paragraph 35 (1) (c)	employee or special member.	AFP appointee.
Subregulation 35 (2)	employee or a special member	AFP appointee
Subregulation 35 (2)	employee or special member	AFP appointee
Subregulation 36 (1)	AFP employee or a special member	AFP appointee
Paragraphs 36 (1) (a) and (b)	employee or special member;	AFP appointee;
Paragraph 36 (1) (c)	employee or special member	AFP appointee
Paragraph 36 (1) (d)	employee's or special member's	AFP appointee's
Subregulation 36 (2)	employee or special member	AFP appointee

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Subregulation 36 (3)	employee or special member,	AFP appointee,
Paragraph 36 (3) (a) and subparagraph 36 (3) (a) (ii)	employee or special member	AFP appointee
Subregulation 36 (4)	employee or a special member	AFP appointee
Subregulation 36 (5)	employee or special member	AFP appointee
Subregulation 39 (1)	AFP employee or special member	AFP appointee
Paragraph 39 (1) (b)	employee or special member	AFP appointee
Subregulation 39 (2)	employee or a special member,	AFP appointee,
Subregulation 39 (3)	employee or a special member	AFP appointee
Subregulation 39 (4)	an employee or special member	an AFP appointee
Subregulation 39 (4)	the employee or special member	the AFP appointee
Subregulation 40 (1)	AFP employee or a special member	AFP appointee
Subregulation 40 (1)	employee or special member.	AFP appointee.
Subregulation 41 (3)	AFP employee	AFP appointee
Subregulation 41 (3)	employee or a special member,	AFP appointee,

**Schedule 3 Amendments of *Jury*
 *Exemption Regulations 1987***
(regulation 5)

[1] Subparagraph 5 (2) (b) (iii)

substitute

(iii) the Family Court of Australia; or

(iv) the Federal Magistrates Court;

[2] Paragraph 5 (2) (g)

omit

section 26B

insert

section 24

[3] Paragraph 5 (2) (i)

omit

**Schedule 4 Amendment of *Privacy*
 (*Private Sector*) *Regulations*
 2001**
(regulation 6)

[1] Schedule 2, item 48
omit

Schedule 5 **Amendment of *Public Order*** **(*Protection of Persons and*** ***Property*) Regulations 1999** (regulation 7)

[1] **Paragraph 8 (1) (a)**

omit

Notes

1. These Regulations amend (in Schedule 1) 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; 2000 Nos. 137 and 138; 2001 No. 77; 2002 Nos. 4 and 326.

These Regulations also amend (in Schedule 2) Statutory Rules 1979 No. 211, as amended by 1980 No. 141; 1982 Nos. 90 and 281; 1984 No. 205; 1985 No. 292; 1988 Nos. 82 and 364; 1989 Nos. 332, 333 and 363; 1990 Nos. 45 and 408; 1992 Nos. 31 and 284; 1993 No. 306; 1995 No. 191; 2000 Nos. 36 and 139.

These Regulations also amend (in Schedule 3) Statutory Rules 1987 No. 186, as amended by 1989 No. 185; 1990 No. 205; 1992 No. 123 (as amended by 1992 No. 289); 1997 No. 316; 2002 No. 326.

These Regulations also amend (in Schedule 4) Statutory Rules 2001 No. 266, as amended by 2002 No. 105; 2003 No. 322.

These Regulations also amend (in Schedule 5) Statutory Rules 1999 No. 26, as amended by 2001 No. 10; 2002 No. 326.

2. Notified in the *Commonwealth of Australia Gazette* on *h* 2004. *22 July*