



# Australian Federal Police Amendment Regulations 2006 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2006 No. 326**

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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*.

Dated 13 December 2006

P. M. JEFFERY  
Governor-General

By His Excellency's Command

CHRISTOPHER MARTIN ELLISON  
Minister for Justice and Customs

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**1 Name of Regulations**

These Regulations are the *Australian Federal Police Amendment Regulations 2006 (No. 1)*.

**2 Commencement**

These Regulations commence on the commencement of sections 3 to 224 of the *Law Enforcement Integrity Commissioner Act 2006*.

**3 Amendment of *Australian Federal Police Regulations 1979***

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

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 2, before the definition of Act**

*insert*

*accredited pathology laboratory* has the same meaning as in subsection 3 (1) of the *Health Insurance Act 1973*.

**[2] Regulation 2, after the definition of *AFP records***

*insert*

*approved breath analysis instrument* means an instrument that is approved for the purposes of conducting a breath test:

- (a) under the law of the State or Territory in which the breath test is conducted; or
- (b) for a breath test conducted in an external Territory or a foreign country — under the law of a State or Territory.

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**[3] Regulation 2, before the definition of *Merit Protection Commissioner***

*insert*

*medical practitioner* has the same meaning as in subsection 3 (1) of the *Health Insurance Act 1973*.

**[4] Regulation 2, before the definition of *remuneration***

*insert*

*registered nurse* has the same meaning as in subsection 3 (1) of the *Health Insurance Act 1973*.

**[5] Regulation 2, note**

*omit*

**[6] Regulation 5**

*substitute*

**5 Suspension from duties**

- (1) The Commissioner may suspend an AFP appointee from duties:
  - (a) if the Commissioner believes on reasonable grounds that the appointee:
    - (i) has, or may have, engaged in conduct that contravenes the AFP professional standards; or
    - (ii) has, or may have, engaged in corrupt conduct; or
  - (b) to allow the appointee to contest an election to a non-parliamentary body.
- (2) The Commissioner may also suspend an AFP appointee from duties if:
  - (a) the appointee 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 appointee 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 is without remuneration.
- (5) The Commissioner must end the suspension if:
  - (a) the Commissioner no longer believes on reasonable grounds that the appointee:
    - (i) has, or may have, engaged in conduct that contravenes the AFP professional standards; or
    - (ii) has, or may have, engaged in corrupt conduct; or
  - (b) the appointee fails to be elected to the non-parliamentary body; or
  - (c) if subregulation (2) applies, the appointee is found not guilty of the offence with which he or she has been charged.
- (6) The Commissioner must end the suspension if:
  - (a) the AFP conduct issue in relation to conduct mentioned in paragraph (1) (a) has been dealt with under Part V of the Act; and
  - (b) either:
    - (i) action, other than termination action, is to be taken in relation to the issue; or
    - (ii) the Commissioner has determined that no further action is to be taken in relation to the issue.

**[7] Regulation 12, note**

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**[8] After Division 2.4**

*insert*

**Division 2.4A Conduct of AFP appointees**

**13A Intentionally prejudicing police services or protective service functions**

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

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

**13B Information — unauthorised disclosure**

An AFP appointee must not, without lawful authority or excuse, disclose or take any action that brings, or is intended to bring, information relating to any of the following matters to the notice of the AFP appointee to whom the matter relates or any other person:

- (a) a matter in relation to information given by a person under Part V of the Act that raises an AFP conduct issue;
- (b) a matter in relation to a decision made by the Commissioner under section 40SD of the Act that an AFP conduct issue in relation to an AFP appointee is to be dealt with under Part V of the Act;
- (c) a matter in relation to an investigation of an AFP conduct issue in relation to an AFP appointee under Subdivision D of Division 3 of Part V of the Act;
- (d) a matter in relation to an inquiry under Division 4 of Part V of the Act.

**13C Information — unauthorised use or access**

- (1) 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.
- (2) For the purposes of paragraph (1) (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.

**13D Bankrupt AFP appointee**

An AFP appointee who becomes a bankrupt must:

- (a) as soon as practicable, advise the Commissioner in writing that he or she is a bankrupt; and
- (b) give the Commissioner information about his or her bankruptcy, as required by the Commissioner.

**Division 2.4B Drug testing**

**Subdivision 2.4B.1 General provisions**

**13E Meaning of *authorised person***

In this Division:

*authorised person* means:

- (a) in relation to a direction to undergo a breath test, blood test or prohibited drug test — a person authorised under regulation 13F; and
- (b) in relation to the conduct of a breath test, blood test or prohibited drug test, or the operation of equipment for purposes of that test — a person authorised under regulation 13G.

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**13F Persons authorised to give directions**

- (1) The Commissioner may, by instrument in writing, authorise a person for the purposes of subsection 40M (1) or 40N (1), (2) or (4) of the Act.
- (2) The Commissioner may authorise:
  - (a) a person by name; or
  - (b) the holder, from time to time, of a particular position by reference to the title of that position.
- (3) The Commissioner must give to a person authorised under this regulation a certificate stating that he or she is an authorised person.
- (4) An authorised person must, if requested to do so, show his or her certificate to an AFP employee or special member who is directed by that person to undergo a test for section 40M or 40N of the Act.

**13G Persons authorised to conduct tests and to operate equipment for that purpose**

A person specified in column 3 of an item in Schedule 1A is authorised:

- (a) to conduct the test specified in column 2 of the item; and
- (b) to operate equipment for purposes of that test.

**13H Conduct of tests — general**

- (1) A breath test, blood test or prohibited drug test conducted for section 40M or 40N of the Act must be conducted:
  - (a) in a respectful manner; and
  - (b) in circumstances affording reasonable privacy to the AFP employee or special member directed to undergo the test.
- (2) The test must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the test and must not involve:
  - (a) removal of more clothing than is necessary for the conduct of the test; and

- (b) more visual inspection than is necessary for the conduct of the test.
- (3) If practicable, the test must be conducted by a person of the same sex as the AFP employee or special member directed to undergo the test.
- (4) If a prohibited drug test requires the AFP employee or special member to provide a sample of hair, the sample must be provided by cutting a strand of hair or removing a strand of hair by its root.

**13J Certificates**

A certificate issued under subregulation 13F(3) or regulation 13M or 13T is evidence of the matters stated in the certificate.

**13K Record keeping**

- (1) All records, including the body sample, relevant to a breath test, blood test or prohibited drug test conducted for section 40M or 40N of the Act must:
  - (a) if the test does not indicate the presence of alcohol or prohibited drugs — be kept in a secure location and be destroyed no later than 2 years from the date on which the test was conducted; and
  - (b) if the test indicates the presence of alcohol or prohibited drugs:
    - (i) for a body sample — be kept in a secure location and destroyed after the period of 2 years from the date on which the test was conducted, unless the Commissioner and the AFP employee or special member who provided the body sample both agree in writing to the records being destroyed at an earlier date; or
    - (ii) for any other record — be kept in a secure location and destroyed as soon as practicable after the AFP employee or special member to whom the record relates ceases, for any reason, to be an AFP employee or special member.



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- (2) However, information obtained from the analysis of a sample may be retained, if:
- (a) it is used for compiling a statistical database; and
  - (b) it does not include information that may be used to identify the AFP employee or special member who provided the sample.

### **13L Disclosure of information**

A person other than the AFP employee or special member who provided the body sample may disclose information revealed by a breath test, blood test or prohibited drug test only:

- (a) if the information is already publicly known; or
- (b) in accordance with this Division; or
- (c) for the investigation of any offence or offences generally; or
- (d) to enable an AFP conduct issue to be dealt with under Part V of the Act and to enable any action to be taken under that Part in relation to the issue; or
- (e) for a decision whether to institute proceedings for an offence; or
- (f) for proceedings for an offence; or
- (g) for the AFP employee's or special member's medical treatment; or
- (h) if the AFP employee or special member consents in writing to the disclosure.

### **Subdivision 2.4B.2 Breath tests**

#### **13M Procedures to be followed**

- (1) A breath test for section 40M or 40N of the Act must be conducted using an approved breath analysis instrument.
- (2) An AFP employee or special member who is directed to undergo a breath test may ask the authorised person conducting the test to arrange for the AFP employee or special member to also undergo a blood test.

- (3) However, neither a request for a blood test to be conducted nor the conduct of a blood test absolves the AFP employee or special member from the obligation to undergo a breath test.
- (4) If the AFP employee or special member asks that a blood test be conducted, the authorised person conducting the breath test must take all reasonable steps to contact a person authorised to conduct a blood test.
- (5) A certificate that makes statements about a matter specified in subregulation (6) and that is expressed to be given for this regulation must be signed by the authorised person who conducted the test.
- (6) The following matters are specified:
  - (a) the type and serial number of the approved breath analysis instrument used to conduct the breath test;
  - (b) the sample number of the test;
  - (c) the full name and date of birth of the person tested;
  - (d) the full name of the authorised person who conducted the test;
  - (e) whether the authorised person conducted a self-test on the instrument before and after the analysis;
  - (f) if the authorised person conducted a self-test:
    - (i) the time and result of the self-test; and
    - (ii) whether the self-test was conducted on ‘override mode’;
  - (g) the date on which, and the time at which, the breath test was conducted;
  - (h) the result of the breath test as shown by the instrument.

### **13N Approval of courses**

The Commissioner may, in writing, approve a training course in conducting breath tests.

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### Subdivision 2.4B.3 Blood tests and prohibited drug tests of body samples other than urine

#### 13P Application

This subdivision applies to:

- (a) blood tests; and
- (b) prohibited drug tests of body samples other than urine.

#### 13Q Definitions

In this subdivision:

*analyst* means a person at an accredited pathology laboratory who performs the quantification of a body sample taken by an authorised person.

*unanalysed sample* means a body sample submitted to an accredited pathology laboratory under paragraph 13R (2) (a) for the purpose of making a sample available for independent testing.

#### 13R Taking of body samples

- (1) An authorised person taking a body sample for the purposes of a blood test or prohibited drug test must:
  - (a) place approximately equal quantities of the sample into 2 containers; and
  - (b) label each container for future identification; and
  - (c) ensure that each container is sealed.
- (2) The authorised person must:
  - (a) if satisfied that the AFP employee or special member from whom the sample was taken is incapable of understanding the procedures that have been applied to him or her — arrange for both sealed containers to be sent to an accredited pathology laboratory; or
  - (b) in any other case — give 1 sealed container to the AFP employee or special member and arrange for the other sealed container to be sent to an accredited pathology laboratory.

**13S Analysis of body samples**

- (1) An analyst at an accredited pathology laboratory must conduct an analysis of a portion of the body sample to determine:
  - (a) the concentration of alcohol in the blood; or
  - (b) whether the body sample contains a prohibited drug.
- (2) If the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug in the sample, an analysis of another portion of the sample must be conducted.
- (3) If 2 containers were submitted to the accredited pathology laboratory under paragraph 13R (2) (a), the sample for the second analysis must be taken from the same container from which the earlier sample was taken.

**13T Certificates**

- (1) As soon as practicable after an analysis is conducted, the analyst who conducted the analysis of the body sample for a blood test or prohibited drug test must give a certificate to:
  - (a) the AFP employee or special member who provided the sample; and
  - (b) the authorised person who directed that the AFP employee or special member undergo the test.
- (2) The certificate must state the following information:
  - (a) the full name of the AFP employee or special member;
  - (b) the date when the sample was taken;
  - (c) the date when the sample was received in the accredited pathology laboratory for analysis;
  - (d) the accredited pathology laboratory identification number of the sample;
  - (e) the date when the analysis was conducted;
  - (f) the results of the analysis;
  - (g) the signature and name of the analyst who conducted the analysis;
  - (h) any observations made during the course of the analysis which may have affected test results.

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- (3) If 2 containers were submitted to the accredited pathology laboratory under paragraph 13R (2) (a), the certificate must also inform the AFP employee or special member that he or she may:
- (a) collect the unanalysed sample from the laboratory within 6 months after the sample was taken; and
  - (b) have that sample independently tested by another accredited pathology laboratory.

### **13U Disputed results**

- (1) If the results of an analysis are disputed by the AFP employee or special member who provided the sample and 2 containers were submitted to the accredited pathology laboratory under paragraph 13R (2) (a):
- (a) the unanalysed sample must be made available for independent testing; and
  - (b) all records of the original test must be made available for re-examination.
- (2) Because of possible degradation of the body sample over time, re-testing need only detect the presence of alcohol or a prohibited drug.

### **Subdivision 2.4B.4 Prohibited drug tests using urine samples**

#### **13V Procedures to be followed**

The provision, and the analysis, of a urine sample for the purposes of a prohibited drug test must be in accordance with the *Australian/New Zealand Standard AS/NZS 4308—2001* 'Procedures for the collection, detection and quantitation of drugs of abuse in urine', as at 29 March 2001.

#### **13W Approval by Commissioner**

The Commissioner may, in writing, approve a training course in supervising the provision of urine samples.

**[9] After Schedule 1***insert*

## **Schedule 1A Persons authorised to conduct tests and to operate equipment for that purpose**

(regulation 13G)

<b>Item</b>	<b>Test</b>	<b>Authorised persons</b>
1	Breath test in accordance with regulation 13M	AFP employee who has completed a training course in conducting breath tests approved under regulation 13N  Member of the police force of a State or Territory who is authorised to conduct a breath test using an approved breath analysis instrument
2	Blood test in accordance with regulation 13R	Medical practitioner Registered nurse
3	Prohibited drug test in accordance with regulation 13R	Medical practitioner Registered nurse
4	Prohibited drug test in accordance with regulation 13V	Medical practitioner Registered nurse  A person who has completed a training course in supervising the provision of urine samples approved under regulation 13W

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).