

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 181

Issued by the authority of the Minister for Home Affairs.

Australian Federal Police Act 1979

Australian Federal Police Amendment Regulations 2008 (No. 1)

The *Australian Federal Police Act 1979* (the Act) provides for the functions, powers and structure of the Australian Federal Police (AFP).

Section 70 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In particular, paragraph 70(c) of the Act states that regulations may be made in relation to the police services that may be rendered by the AFP at the request of, or under an agreement with, a member of the public or body corporate or other organisation (other than an authority of the Commonwealth), and the payment and recovery of such fees as are prescribed in relation to rendering those services.

Paragraph 70(d) of the Act states the regulations may also provide for the payment of such fees as are prescribed in relation to police services rendered by the AFP in relation to a prescribed authority of the Commonwealth where rendering those services is a function of the AFP.

The *Australian Federal Police Regulations 1979* (the Principal Regulations) prescribe fees for national police check services provided by the AFP at the request of, or under agreement with, an individual, body corporate or other organisation, or to an authority of the Commonwealth.

The purpose of the Regulations is to amend the Principal Regulations to vary the fees payable to the AFP for conducting these national police check services.

National police check services involve checking a person's name or fingerprints to identify whether that person has been convicted of an offence and making a report of the search result. To do these checks the AFP searches databases owned and managed by other agencies (such as CrimTrac). The other agencies charge the AFP to use their databases.

The Principal Regulations previously prescribed a flat fee for the provision of national police check services. These fees have remained unchanged since 2000. However, under this system, the proportion of the fee that the AFP received to meet its internal costs was being steadily eroded as the fees the AFP was being charged to search databases owned and managed by other agencies increased.

In 2007/08, the AFP processed in excess of 550,000 national police checks. The reduction in the amount applied to AFP internal costs was placing stress on the resources of the AFP.

The Regulations alter the fees for national police check services so that the fee is the amount prescribed in the regulations (which represents the AFP's internal costs of providing each service) plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.

The AFP will publish the total amount payable for national police check services on its website.

The Regulations also remove the reference to the fee for each police service listed in Schedule 2 of the Principal Regulations as being the price of the taxable supply within the meaning of *A New Tax System (Goods and Services Tax) Act 1999*. Each of the fees have been exempt from Goods and Services Tax since 1 July 2007.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on 1 October 2008, which is the first day of the second quarter of this financial year.

The Australian Federal Police was consulted and the Treasury and Australian Tax Office were consulted on the Goods and Services Tax implications of the amendments.

Details of the Australian Federal Police Amendment Regulations 2008 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Australian Federal Police Amendment Regulations 2008 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 October 2008, which is the first day of the second quarter of the financial year.

Regulation 3 – Amendment of Australian Federal Police Regulations 1979

This regulation provides that the *Australian Federal Police Regulations 1979* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – subregulation 34(1)

Subregulation 34(1) previously provided that the fee for a police service referred to in column 2 of an item in Schedule 2 to the Regulations was set out in column 3 of that item. This item provides that subregulation 34(1) is subject to new subregulation 34(2) which provides that the fee for the services in items 1, 2 and 4 of Schedule 2 is the amount mentioned in the item plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.

Item [2] – subregulation 34(2)

This repeals subregulation 34(2) and replaces it with a new provision.

The repealed subregulation 34(2) stated that the fees for police services in Schedule 2 of the Principal Regulations were ‘taxable supplies’ within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (and consequently, they were subject to GST). However, since 1 July 2007 the fees for items in Schedule 2 have been declared exempt from Goods and Services Tax by determinations made each six months under Division 81 of *A New Tax System (Goods and Services Tax) Act 1999*. Accordingly, subregulation 34(2) was no longer required in this form.

The new subregulation 34(2) provides that the fee for the services in items 1, 2 and 4 of Schedule 2 (the national police check services) is the amount mentioned in the item (which represents the AFP’s internal costs of providing each service) plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.

Item [3] – Schedule 2, item 1, column 3

This item amends the amount that the AFP is entitled to charge for a national police check service that involves searching a person's name against AFP records for any information about convictions for offences committed by a person, and making a report of the search result.

The amount is reduced from \$36 to \$20. However, the new amount represents only the AFP's internal costs of providing the service.

New subregulation 34(2) provides that the fee for this service will be the amount in Schedule 2 plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.

Item [4] – Schedule 2, item 2

This item incorporates two amendments:

- the service described in this item is re-defined as taking a set of fingerprints, searching the fingerprints against AFP records and making a report of the search result (the service previously described in this item also included a search of a person's name against AFP records, which is the service described in item 1), and
- the amount for this fingerprint check is reduced from \$130 to \$78, which represents only the AFP's internal costs of providing the service.

New subregulation 34(2) provides that the fee for this service will be the amount in Schedule 2 plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.

Item [5] – Schedule 2, item 4, column 3

This item amends the amount that AFP is entitled to charge for a national police check service that involves searching a set of fingerprints given by an applicant against AFP records and making a report of the search result.

The amount is reduced from \$67 to \$38. However, the new amount represents only the AFP's internal costs of providing the service.

New subregulation 34(2) provides that the fee for this service will be the amount in Schedule 2 plus any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.