

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 202

Issued by the authority of the Minister for Justice

Australian Federal Police Act 1979

Australian Federal Police Amendment Regulations 2011 (No. 1)

The Australian Federal Police (AFP) is a Commonwealth law enforcement agency working nationally with other Commonwealth, State and Territory police and investigative agencies.

Section 70 of the *Australian Federal Police Act 1979* (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 securing the discipline and good government of the AFP, or for otherwise carrying out or giving effect to the Act.

The purpose of these regulations is to amend the *Australian Federal Police Regulations 1979* (the Principal Regulations) to:

- introduce a clearer and more detailed procedure for making deductions from the salary of a member, officer or AFP employee to satisfy a judgement debt
- provide different options for the oath or affirmation that members and officers are required to make upon appointment to the AFP and clarify that it is not necessary that a religious text be used in making and subscribing an oath
- amend the provisions for disposal of liquid property seized or held by the AFP
- prescribe a range of new awards that the Commissioner may confer for bravery or other conspicuous conduct, and associated criteria, and
- amend the prescribed fee that the AFP charges to provide National Police Check Services in line with recent increases in the consumer price index.

Procedure for making salary deductions to satisfy a judgement debt

Under regulation 13 of the Principal Regulations, when an AFP employee has a judgement debt made against them, a creditor may apply for deductions to be made from the employee's salary to satisfy the debt owed. The regulations repeal regulation 13 of the Principal Regulations and replace it with new regulations 12A - 12K. New regulations 12A-12K provide a clearer and more detailed process for making deductions from an AFP employee's salary in satisfaction of a judgement debt, including conferring the power to make deductions on a person (rather than the AFP) and setting out a process for making the deductions and a rate at which the deductions are to be made. The new regulations provide greater certainty and protection of interests of both the judgement creditor and the judgement debtor.

Prescribed oaths and affirmations

Upon appointment to the AFP, the Commissioner, Deputy Commissioners, members, special members, protective service officers and special protective service officers are required under section 36 of the Act to make and subscribe an oath or affirmation in the format prescribed in regulations. The Principal Regulations contained an oath that was premised on Christian beliefs. An increasing number of people from culturally and linguistically diverse backgrounds are joining the AFP. The regulations amend the Principal Regulations to provide different options that can be used for the oath to cater to different religious beliefs and also clarify that it is not necessary that a religious text be used in making and subscribing such an oath.

Disposal of liquid property seized or held by the AFP

Subregulation 31(3) of the Principal Regulations provides for disposal of property held or seized by the AFP, when it is no longer required by the AFP and the Commissioner is satisfied that the person entitled to its possession either cannot be located or does not want the property. However, subregulation 31(3) did not provide a mechanism for the AFP to dispose of liquid property that has been held or seized. The regulations repeal subregulation 31(3) of the Principal Regulations and replace it with a provision that makes separate provision for the disposal of liquid and other property that is held or seized by the AFP.

Awards

Under section 61 of the Act, the Commissioner may confer a prescribed award on an AFP appointee or a person other than an AFP appointee because of his or her bravery, conspicuous conduct or diligent service. The regulations prescribe additional awards that may be conferred by the Commissioner under section 61 of the Act. The awards available now better reflect the current working environment of the AFP and its updated internal awards framework and enable awards to be conferred on people who are not AFP appointees who assist the AFP.

Fees for National Police Check Services

Regulation 34 and Schedule 2 to the Principal Regulations prescribe a list of police services that may be provided by the AFP and the fees applicable to those services. The AFP provides National Police Check Services to the public, government agencies and non-government agencies and uses fees to recover the costs of these services. The regulations amend the prescribed fee that the AFP charges to provide National Police Check Services from \$20 to \$21. This increase is to take account of increases in the costs to the AFP of providing this service, brought about by consumer price index increases.

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 commence on 1 December 2011.

The AFP was consulted on the regulations.

Details of the Australian Federal Police Amendment Regulations 2011 (No. 1)

Regulation 1 - Name of Regulations

This regulation provides that the title of the regulations is the *Australian Federal Police Amendment Regulations 2011 (No. 1)*.

Regulation 2 - Commencement

This regulation provides that the regulations commence on 1 December 2011.

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 to the regulations.

Regulation 4 – Transitional

Item [4] repeals regulation 13 from the Principal Regulations and inserts a new scheme for the recovery of judgement debts from AFP employees who are judgement debtors. Regulation 4 enables recovery of judgement debts underway under regulation 13 of the Principal Regulations to continue after the regulations commence.

Schedule 1 - Amendments

Item [1] - Regulation 2, after definition of *cost to AFP for use of AFP employee's time*

Regulation 2 of the Principal Regulations defines various terms for the purpose of the Principal Regulations. This item inserts a definition of 'liquid property' in regulation 2 of the Principal Regulations. 'Liquid property' is defined to include money and negotiable instruments, but not property that has a collectable value. An example of something that has a collectable value is a rare coin where the face value of the coin is lower than its market value.

A similar definition of liquid property was previously included in regulation 29 of the Principal Regulations. This definition is repealed by item [6].

Item [2] - After subregulation 9(2)

Regulation 9 of the Principal Regulations prescribes the oaths and affirmations that the Commissioner, Deputy Commissioners, members, special members, protective service officers and special protective service officers may make upon appointment to the AFP for the purposes of section 36 of the Act.

This item inserts new subregulation 9(3) into the Principal Regulations to clarify that it is not necessary for a religious text to be used in the making and subscribing of an oath upon appointment to the AFP. This change is in keeping with current practice on the taking of oaths and takes account of the increasing number of people from culturally and linguistically diverse backgrounds being appointed to the AFP.

Item [3] - Division 2.4, heading

The regulations amend Division 2.4 of the Principal Regulations, to insert a new Subdivision, Submission of financial statements.

Item [4] - Regulation 13

Regulation 13 of the Principal Regulations sets out a process for recovery of judgement debts owed by AFP employees through salary deductions. This item repeals regulation 13 and inserts regulations 12A – 12K, which set out a new scheme for the recovery of judgement debts.

Regulation 12A - Definitions

Regulation 12A defines a number of terms for the purposes of Subdivision 2.4.2.

Regulation 12B - Application of Subdivision 2.4.2

Regulation 12B provides that Subdivision 2.4.2 does not apply to an AFP debtor who has not yet obtained a certificate of discharge and whose estate has been sequestered for the benefit of creditors. This provision is to ensure that deductions are not made for judgement debts for which payment is already being managed through a bankruptcy process.

Regulation 12C - Application of State or Territory law

Regulation 12C provides that State and Territory laws about satisfying a judgement debt apply to an AFP debtor's judgement debt only to the extent that they deal with the calculation of interest on the debt. This provision is to ensure that an AFP debtor whose judgement debt is being recovered is not also subject to a parallel process initiated under a State or Territory law, such as an order to make salary deductions or an order over property made under section 106 of the *Civil Procedure Act 2005* (NSW). It also takes account of the differing legal provisions for the calculation of interest on a debt in the States and Territories. The term 'judgement debt' is defined in regulation 12A to include interest on a judgement debt.

Regulation 12D - Paying officer

Regulation 13 of the Principal Regulations confers the power to make salary deductions in satisfaction of a judgement debt on the AFP rather than a particular person within the agency. Regulation 12D instead provides for the appointment of a paying officer for the purpose of making the deductions. Providing for the appointment of paying officers would provide clarity and certainty about where responsibility rests for making salary deductions in satisfaction of a judgement debt. The new provisions also clarify who exercises the administrative power of deciding whether deductions from an AFP debtor's salary are required to satisfy a judgement debt.

Subregulation 12D(1) provides that if the Commissioner is satisfied on reasonable grounds that deductions from an AFP debtor's salary are required to satisfy a judgement debt, he or she must make an appointment in writing of one or more persons as paying officers for the purpose of making the deductions. Subregulation 12D(1) is subject to subregulation 12D(2), which sets out an alternative process if the Commissioner is the debtor to ensure that no conflict of interest arises if the Commissioner owes a judgement debt. In such instances, subregulation 12D(2) requires the Commissioner to delegate in writing his or her powers under subregulation 12D(1) to a senior executive AFP employee and act to prohibit the Commissioner from taking any other action or

making any arrangement other than, where a paying officer is appointed, assisting the paying officer in satisfying the debt. Paragraph 12D(2)(a) specifically prohibits the Commissioner from appointing a paying officer. Paragraph 12D(2)(b) provides that the Commissioner must delegate the power to appoint a paying officer without prior consideration of whether the making of deductions from his or her salary is required. Paragraph 12D(2)(d) provides that a senior executive to whom the power under subregulation 12D(1) is delegated must decide whether deductions from the Commissioner's salary are required and, where they are, appoint a paying officer for the purpose of making the deductions.

Subregulation 12D(3) provides that if a person is appointed as a paying officer he or she may act as a paying officer only in relation to the debtor to whom the appointment relates and that he or she is responsible for making deductions from the debtor's salary to satisfy the judgement debt. This subregulation appropriately limits the power of a paying officer to deduct money from an AFP debtor's salary.

Subregulation 12D(4) provides that a debtor must not be a paying officer for him or herself. The subregulation is designed to avoid a conflict of interest in the exercise of a paying officer's responsibilities.

Regulation 12E - Authority to make deductions

Regulation 12E sets out the responsibilities and obligations of the paying officer in relation to commencing and continuing to make deductions from an AFP debtor's salary in order to meet a judgement debt.

Subregulation 12E(1) sets out the conditions that must be satisfied before a paying officer may commence making deductions from a debtor's salary. Specifically, it provides that deductions may only commence if:

- the paying officer has received a statutory declaration, made by the judgement creditor, that the judgement debt exists and has not been discharged
- the paying officer has received a court certified copy of the judgement to which the debt relates
- the paying officer has received the fee (if any) required under regulation 12F
- the paying officer has given the debtor a notice in accordance with subregulation 12E(2), and
- the debtor has not satisfied the paying officer that the debt has been discharged.

Once the paying officer is satisfied that the first three requirements under subregulation 12E(1) are met, subregulation 12E(2) requires the paying officer to notify the AFP debtor in writing, as soon as practicable, that it is proposed to make deductions. The paying officer must also require the AFP debtor to provide written information within the time specified in the notice about whether the judgement debt has been satisfied. The paying officer must require that if the debt has been satisfied, the AFP debtor is to provide evidence to the paying officer in support of that fact by the time specified in the notice. If the debt has not been satisfied, the AFP debtor must state in writing the amount due at the time the statement is made by the time specified in the notice. This subregulation ensures that AFP debtors from whose salary it is proposed to make deductions are given notice of that intention and the opportunity to provide evidence that the debt has been satisfied.

Subregulation 12E(3) requires the paying officer to begin making deductions from the AFP debtor's salary each pay day if the debtor has not provided evidence that the judgement debt has been satisfied. It provides that deductions made from the debtor's salary are to be of an amount determined under subregulation 12I or a lesser amount that in the paying officer's opinion is needed to satisfy the balance of the judgement debt. This subregulation ensures that if the amount required to satisfy a debt is less than the rate of deductions provided for under subregulation 12I, the paying officer can reduce the amount to avoid an overpayment being made to the creditor.

Subregulation 12E(4) provides that after the first deduction, the paying officer may only continue to make deductions if he or she has no reason to believe that the debt has been discharged. This subregulation helps avoid an overpayment being made to the creditor and unnecessary deductions being made from the AFP debtor's salary.

Subregulation 12E(5) requires the paying officer to ensure that the amount of each deduction is paid to the judgement creditor. This subregulation ensures that the deductions made from a debtor's salary are made in satisfaction of the debt. This subregulation protects the debtor from a claim by the creditor that the debtor has not paid the debt owed despite deductions having been made from the debtor's salary.

Regulation 12F - Administration fee

Regulation 12F provides for the payment of an administration fee by the creditor (unless the creditor is the Commonwealth) for the process of making the deductions to satisfy the debt. As the AFP is a Commonwealth agency, it would not be appropriate for it to charge the Commonwealth an administration fee. The Principal Regulations required the payment of an administration fee of \$35 by the creditor. The regulations increase this fee by three dollars to cover the current operating costs to the AFP of complying with the Principal Regulations.

Subregulation 12F(2) provides that the administration fee is the price of the supply of a service for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*, meaning that goods and services tax is payable on the administration fee.

Subregulation 12F(3) provides that where a judgement creditor other than the Commonwealth has requested the payment of a judgement debt via salary deductions but does not pay the fee, the paying officer must notify the creditor that the fee is payable and that deductions will not be made unless the fee is paid.

Regulation 12G - More than one judgement debt

There may be circumstances where more than one judgement debt exists against an AFP debtor. Regulation 12G sets out a clear order of priority for paying officers to follow so that these situations are dealt with fairly and consistently.

Subregulation 12G(1) provides that paying officers are to deal with judgement debts consecutively according to the order in which requests for payment from judgement creditors are received. Subregulation 12G(2) provides that if two or more requests for payment are received at the same time, payment is to be made in order of the dates and times at which the judgements were given for the debts, beginning with the earliest judgement.

Regulation 12H - Effect of deductions

Once deductions from the salary of an AFP employee have commenced, the AFP deducts an amount from the employee's salary for payment to the creditor and pays the balance to the employee. Regulation 12H ensures that the making of deductions from the salary of an AFP debtor does not create any claimable rights against the AFP, the creditor or the debtor.

Paragraph 12H(a) provides that an amount equal to that paid by the AFP to the creditor is taken to have been paid by the AFP to the debtor (or employee). This avoids the potential for the AFP debtor to claim against the AFP for non-payment of salary owed to him or her.

To ensure that the payments made by the AFP to a judgement creditor will be used to satisfy the debt owed by the employee, paragraph 12H(b) provides that an amount equal to that paid by the AFP to the creditor is taken to have been paid by the debtor for the purposes of satisfying the judgement debt. This subregulation prevents the creditor from claiming that the debtor has not paid the debt owed despite deductions having been made from the debtor's salary.

Regulation 12I - Rate of deductions

Regulation 12I prescribes the rate at which deductions can be made from an AFP debtor's salary to satisfy a judgement debt. This provision prescribes a default rate, while also allowing flexibility for payments to be made at higher rate if requested by the debtor, or at a lower rate if the default rate would contribute to or exacerbate serious financial hardship for the debtor.

Subregulation 12I(1) provides that the default rate at which salary deductions are to be made by the paying officer is 20% of the debtor's net salary. The term 'net salary' is defined in regulation 12A. Payments are to be made at this rate unless subregulation 12I(2), (3) or (4) applies.

Subregulation 12I(2) allows the rate of deduction to be less than 20% of the debtor's salary if the paying officer is satisfied on reasonable grounds that the debtor is suffering serious financial hardship or would suffer serious financial hardship if the rate of deduction is not reduced. This flexibility in the application of the deduction rate is an important safeguard of the interests of the debtor.

Subregulation 12I(3) allows for the deduction rate to be greater than 20% if the debtor makes a request, in writing, to increase the rate. This allows the debtor to request that deductions be made at a greater rate, for example if he or she wishes to satisfy the judgement debt sooner.

Where the rate of deductions is greater than 20%, subregulation 12I(4) allows a debtor to make a written request that the rate of reduction be reduced. The paying officer must reduce the rate of deductions as soon as possible, but is not required to reduce the rate to less than 20% on the basis of such a request. There is flexibility under subregulation 12I(2) for the paying officer to reduce the rate below 20% if he or she is satisfied on reasonable grounds that the debtor is suffering serious financial hardship or would suffer serious financial hardship if the rate of deduction is not reduced.

Regulation 12J - Administration of deductions

Regulation 12J contains provisions designed to ensure the proper administration of salary deductions made to satisfy a judgement debt.

Subregulation 12J(1) allows the paying officer to request confirmation from the judgement creditor that the debt has not been discharged. The paying officer may suspend salary deductions until confirmation is received. This subregulation enables the paying officer to check the status of a debt at any time, including at the request of the debtor. This will assist to ensure that payments are made only until the debt is satisfied and are not continued where there is uncertainty about whether the debt has already been discharged.

Subregulation 12J(2) requires the paying officer to advise a judgement creditor in the event that the debtor's employment with the AFP ceases, or is terminated. Subregulation 12J(2) is important to ensure that the judgement creditor is kept informed about the status of the debtor's employment with the AFP. If the judgement creditor is no longer receiving payments from a debtor's salary, he or she may wish to pursue alternative means of recovering the debt.

Regulation 12K - Recovery of overpayment

Regulation 12K provides for the repayment of excess monies received by the judgement creditor in the event of an overpayment. It requires a judgement creditor to repay any amount received against a judgement debt that exceeds the amount due under the judgement to the judgement debtor. This provides an important safeguard of the debtor's interests.

Item [5] - Regulation 14

Subsection 61(1) of the Act gives the Commissioner power to confer a prescribed award on an AFP appointee because of his or her bravery or other conspicuous conduct. This section was amended on 3 March 2011 by the *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011* (Cth) to enable awards to be conferred for diligent service and to insert subsection 61(1A), which gives the Commissioner power to confer a prescribed award on a person who is not an AFP appointee. Subsection 61(2) of the Act states that an award prescribed under subsection 61(1) will be awarded on the basis of prescribed criteria. Regulation 14 of the Principal Regulations prescribed two awards and the criteria under which the awards will be conferred.

Item [5] repeals and replaces regulation 14 of the Principal Regulations to provide that the awards and the criteria under which they will be conferred that are set out in Schedule 1B are prescribed.

Item [9] inserts Schedule 1B into the Principal Regulations. The schedule prescribes thirteen awards that may be conferred by the Commissioner under section 61 of the Act, including the two previously prescribed in regulation 14 of the Principal Regulations, and the conditions under which the awards may be conferred. The awards available better reflect the current working environment of the AFP, its updated internal awards framework and the ability to confer awards on people who are not AFP appointees.

Item [6] - Subregulation 29(8), including example

Item [6] repeals the definition of ‘liquid property’ from regulation 29 of the Principal Regulations. Item [1] inserts a definition of ‘liquid property’ in regulation 2 of the Principal Regulations which is similar to that repealed by this item but which applies to the whole of the Principal Regulations.

Item [7] - Subregulation 31(3)

Regulation 31 of the Principal Regulations sets out how property seized by the AFP or held by the AFP for evidentiary purposes is to be dealt with once the reason for its detention has no further effect. Subregulation 31(2) of the Principal Regulations provides that 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 once the reason for its detention has no further effect. Subregulation 31(3) sets out how such property is to be dealt with if the Commissioner is reasonably satisfied that the person entitled to its possession either cannot be located or does not want it. However, the subregulation did not provide for disposal of liquid property.

Item [7] repeals and replaces subregulation 31(3) of the Principal Regulations to provide for disposal of liquid property and other property where the Commissioner is reasonably satisfied that the person entitled to its possession either cannot be located or does not want it. New subregulation 31(3) provides that in these circumstances, liquid property becomes public money within the meaning of the *Financial Management and Accountability Act 1997* (the FMA Act). This is consistent with how liquid property is dealt with under regulation 29 of the Principal Regulations, which provides that liquid property lawfully obtained by other means becomes public money under the FMA Act if it remains unclaimed after a certain period of time.

Other property will continue to be dealt with as it is currently. That is, the Commissioner may, as appropriate, dispose of the property under subregulation 30(2) or direct that it be disposed of under subregulation 30(3) or 30(4) of the Principal Regulations as if those subregulations applied to the property.

Item [8] - Schedule 1, Forms 2, 3, 3A and 3B

Upon appointment to the AFP, the Commissioner, Deputy Commissioners, members, special members, protective service officers and special protective service officers are required under section 36 of the Act to make and subscribe an oath or affirmation in the format prescribed in regulations. The oaths and affirmations are set out in Forms 2, 3, 3A and 3B of Schedule 1 to the Principal Regulations. Item [8] repeals these forms and replaces them with revised versions to enable several amendments to be made to the oaths and affirmations. In particular, the amendments:

- allow a reference to a god recognised by the religion of the person taking the oath to be substituted for a reference to ‘God’ in the oaths prescribed in forms 2 and 3A, and
- allow a person to either ‘swear’ or ‘promise’ faithfulness and allegiance when making an oath prescribed in form 2 or 3A.

These changes are in keeping with current practice on the taking of oaths and take account of the increasing number of people from culturally and linguistically diverse backgrounds being appointed to the AFP.

The oaths and affirmations used for members and special members have also been extended for use upon appointment of the Commissioner or a Deputy Commissioner. The Principal Regulations did

not previously include prescribed forms for an oath or affirmation to be taken upon such an appointment.

Item [9] - After Schedule 1A

Item [5] repealed and replaced regulation 14 of the Principal Regulations to provide that the awards that may be conferred under subsections 61(1) and 61(1A) of the Act and the criteria under which the awards will be conferred for the purposes of subsection 61(2) of the Act are set out in Schedule 1B to the Principal Regulations.

This item inserts Schedule 1B to the Principal Regulations. The Schedule prescribes thirteen awards, including the two previously prescribed in regulation 14 of the Principal Regulations.

The second column of Schedule 1B prescribes the following awards:

- Commissioner's Commendation for Bravery
- Commissioner's Commendation for Conspicuous Conduct
- Commissioner's Commendation for Excellence in Overseas Service
- Commissioner's Commendation for Hazardous Overseas Service
- Commissioner's Group Citation for Bravery
- Commissioner's Group Citation for Conspicuous Conduct
- Commissioner's Group Citation for Excellence in Overseas Service
- Commissioner's Group Citation for Hazardous Overseas Service
- Commissioner's Medal for Excellence
- Commissioner's Medal for Innovation
- Australian Federal Police Operations Medal
- Australian Federal Police Service Medal
- Australian Protective Service Medal

The third column prescribes the criteria under which each award may be conferred.

Item [10] - Schedule 2

Section 70 of the Act provides that fees payable to the AFP for police services may be prescribed in regulations. Regulation 34 of the Principal Regulations provides that such fees are set out in Schedule 2 to the Principal Regulations.

Item [10] amends the fee for searching AFP records for information about convictions for offences committed by a person and making a report of the search result (item 1 Schedule 2) from \$20 to \$21. This increase is to take account of increases in the costs to the AFP of providing this service, brought about by consumer price index increases.