



Australian Federal Police Amendment Regulations 2011 (No. 1)¹

Select Legislative Instrument 2011 No. 202

I, QUENTIN BRYCE, 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 23 November 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Justice

1 Name of Regulations

These Regulations are the *Australian Federal Police Amendment Regulations 2011 (No. 1)*.

2 Commencement

These Regulations commence on 1 December 2011.

3 Amendment of *Australian Federal Police Regulations 1979*

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

4 Transitional

Despite the amendments made by item [4] of Schedule 1, regulation 13 of the *Australian Federal Police Regulations 1979*, as in force immediately before the commencement of these Regulations, continues to apply to a judgement debt if:

- (a) the judgement debt existed and was not discharged before 1 December 2011; and
- (b) deductions made for the judgement debt started before 1 December 2011.

Schedule 1 Amendments

(regulation 3)

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

insert

liquid property includes money and negotiable instruments, but does not include property that has a collectable value.

Example

Property that has a collectable value could include a rare coin, a proof set of coins, a coin collection, a rare currency note or a collection of currency notes, the face value of which is less than its market value.

[2] After subregulation 9 (2)

insert

- (3) It is not necessary that a religious text be used in making and subscribing an oath mentioned in subregulation (1) or (2).

[3] Division 2.4, heading

substitute

Division 2.4 Financial matters

Subdivision 2.4.1 Submission of financial statements

[4] Regulation 13

substitute

Subdivision 2.4.2 Deductions from salaries to satisfy judgment debts

12A Definitions

- (1) In this Subdivision:

debtor means any of the following persons who owe a judgment debt:

- (a) the Commissioner;
- (b) a Deputy Commissioner;
- (c) an AFP employee;
- (d) a special member;
- (e) a special protective service officer.

judgment creditor means a person in whose favour a judgment for a sum of money has been given.

judgment debt includes interest on a judgment debt.

net salary has the meaning given by subregulation (2).

paying officer, for a debtor, means a person appointed under regulation 12D who is responsible for dealing with the debtor.

total gross salary has the meaning given by subregulation (3).

- (2) The **net salary** of a debtor is the debtor's total gross salary, less any amount to be deducted:
- (a) to pay income tax; and
 - (b) if applicable, to pay child support in accordance with the *Child Support (Assessment) Act 1989*; and
 - (c) as a contribution that:
 - (i) the debtor is required to make to a superannuation fund relating to the debtor's engagement in the AFP; and
 - (ii) is the minimum amount required by law or by the rules of the fund.
- (3) The **total gross salary** of a debtor is the amount of:
- (a) the debtor's gross salary as the Commissioner, a Deputy Commissioner, an AFP employee, a special member or a special protective service officer (not including any payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988*); and
 - (b) the allowances, in the nature of salary, that are paid to the debtor;
- without any reduction for salary sacrifice arrangements, or other arrangements for a similar purpose.

12B Application of Subdivision 2.4.2

This Subdivision does not apply to a debtor:

- (a) whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors; and
- (b) who has not yet obtained a certificate of discharge.

12C Application of State or Territory law

A law of a State or a Territory that deals with satisfying a judgment debt:

- (a) applies to a debtor's judgment debt only to the extent that the law deals with the calculation of interest on the debt; and
- (b) does not apply to the judgment debt for any other purpose.

12D Paying officer

- (1) If the Commissioner is satisfied, on reasonable grounds, that the making of deductions from a debtor's salary is required to satisfy a judgment debt, the Commissioner must appoint, in writing, one or more persons as paying officers for the purpose of making those deductions.
- (2) However, if the Commissioner is the debtor:
 - (a) the Commissioner must not appoint a paying officer under subregulation (1); and
 - (b) the Commissioner must act under this subregulation without considering whether the making of deductions from the Commissioner's salary is required; and
 - (c) the Commissioner must, in writing, delegate his or her power under subregulation (1) to appoint a paying officer to a senior executive AFP employee; and
 - (d) the senior executive AFP employee must:
 - (i) decide whether the making of deductions from the Commissioner's salary is required; and
 - (ii) if the senior executive AFP employee decides that the making of deductions is required to satisfy a judgment debt — appoint, in writing, a person as a paying officer for the purpose of making those deductions; and
 - (e) the Commissioner must not take any action, or make any arrangement, in relation to the administration under this Subdivision of the Commissioner's debt, other than:
 - (i) making the delegation mentioned in paragraph (c); and
 - (ii) if a paying officer is appointed — assisting the paying officer in satisfying the debt.
- (3) If a person is appointed as a paying officer:
 - (a) the appointment authorises the person to act as a paying officer only in relation to the debtor to whom the appointment relates; and
 - (b) the person is responsible for making deductions from the debtor's salary to satisfy the judgment debt against the debtor.

- (4) A debtor must not be a paying officer for himself or herself.

12E Authority to make deductions

- (1) Deductions from a debtor's salary to satisfy a judgment debt may be started only if:
- (a) the paying officer has received a statutory declaration, made by the judgment creditor, that the judgment debt exists and has not been discharged; and
 - (b) the paying officer has received a copy of the judgment to which the judgment debt relates, certified by the Registrar or other appropriate officer of the relevant court; and
 - (c) the paying officer has received the fee (if any) required under regulation 12F; and
 - (d) the paying officer has given the debtor a notice in accordance with subregulation (2); and
 - (e) the debtor does not, within the time specified in the notice given under subregulation (2), satisfy the paying officer that the judgment debt has been satisfied.

Note For cases where there is more than one judgment debt against a debtor, see regulation 12G.

- (2) The paying officer must:
- (a) notify the debtor, in writing, as soon as practicable after being satisfied that the requirements mentioned in paragraphs (1) (a), (b) and (c) are met, that it is proposed to make the deductions; and
 - (b) require the debtor to state, in writing, by a time specified in the notice, whether the judgment debt has been satisfied; and
 - (i) if the judgment debt has been satisfied — to give the paying officer evidence in support of that fact; and
 - (ii) if the judgment debt has not been satisfied — to state, in writing, the amount due under the judgment at the time the statement is made.

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- (3) If the debtor does not give the paying officer evidence that the judgment debt has been satisfied by the time specified in the notice under subregulation (2), the paying officer must deduct from the debtor's salary on each pay day for the debtor an amount equal to:
 - (a) the deduction required under regulation 12I; or
 - (b) a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgment debt.
 - (4) After making the first deduction, the paying officer may only continue to make deductions if the paying officer has no reason to believe that the judgment debt has been discharged.
 - (5) The paying officer must ensure that the amount of each deduction is paid to the judgment creditor.

12F Administration fee

- (1) A judgment creditor (other than the Commonwealth) who requests the payment of a judgment debt must pay a fee of \$38 for the making of the deductions.
- (2) The 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*.
- (3) If a judgment creditor (other than the Commonwealth) requests the payment of a judgment debt, but does not pay the fee when making the request, the paying officer must notify the judgment creditor that:
 - (a) the fee is payable for making the deductions; and
 - (b) no deductions will be made unless the fee is paid.

12G More than one judgment debt

- (1) If more than one judgment debt exists against a debtor, the paying officer:
 - (a) must deal with the judgment debts in the order in which the requests for deductions were received; and
 - (b) must not make a deduction for the purpose of a particular judgment debt until all judgment debts for which earlier requests were made have been satisfied.

- (2) If the paying officer receives 2 or more requests at the same time for the payment of judgment debts against a debtor, the paying officer must deal with the judgment debts in the order of the dates and times at which judgment was given for each debt, starting with the earliest judgment.

12H Effect of deductions

If an amount is paid to a judgment creditor after a deduction is made from the debtor's salary on a pay day for the debtor:

- (a) an amount equal to that amount is taken to have been paid by the Commonwealth to the debtor on account of salary payable to the debtor on that pay day; and
- (b) an amount equal to that amount is taken to have been paid by the debtor to the judgment creditor for the purposes of the judgment debt.

12I Rate of deductions

- (1) For paragraph 12E (3) (a), the rate at which a deduction is to be made from the debtor's net salary on a pay day for the debtor is 20%, unless subregulation (2), (3) or (4) applies.
- (2) The paying officer may reduce the rate at which deductions are to be made if the paying officer is satisfied, on reasonable grounds, that the debtor:
- (a) is suffering serious financial hardship; or
- (b) would suffer serious financial hardship if the rate of deduction were not reduced.
- (3) If the debtor asks the paying officer, in writing, to make deductions at a rate greater than 20% of the debtor's net salary, the paying officer must comply with the request as soon as practicable.
- (4) The paying officer must reduce the rate as soon as practicable, but is not required to reduce the rate to less than 20%, if:
- (a) deductions are being made at a rate greater than 20% of the debtor's net salary; and
- (b) the debtor asks a paying officer, in writing, to reduce the rate of the deductions.

12J Administration of deductions

- (1) A paying officer, in relation to a debtor, may:
 - (a) require the judgment creditor to confirm that the judgment debt has not been discharged; and
 - (b) suspend the making of deductions until the paying officer receives the confirmation.
- (2) If a debtor's employment with the AFP ceases, or is terminated, for any reason (including the debtor's death) the paying officer must, as soon as practicable, notify the judgment creditor of the cessation or termination.

12K Recovery of overpayment

If a payment made to a judgment creditor for a judgment debt exceeds the amount due under the judgment, the judgment creditor must repay the excess to the debtor.

[5] Regulation 14

substitute

14 Awards for bravery, other conspicuous conduct or diligent service

- (1) For subsections 61 (1) and 61 (1A) of the Act, an award mentioned in column 2 of Schedule 1B is prescribed.
- (2) For subsection 61 (2) of the Act, a criterion mentioned in column 3 of an item in Schedule 1B is prescribed for the award mentioned in column 2 of the item.

[6] Subregulation 29 (8), including the example

omit

[7] Subregulation 31 (3)

substitute

- (3) However, if the Commissioner is reasonably satisfied that the person entitled to possession of the property cannot be located or does not want the property:
- (a) for liquid property — the property becomes public money within the meaning of the *Financial Management and Accountability Act 1997*; and
 - (b) for any other property — the Commissioner may, as appropriate, dispose of the property in accordance with subregulation 30 (2) or direct that the property be disposed of in accordance with subregulation 30 (3) or (4) (as if those subregulations applied to the property).

Note for paragraph (a) See the *Financial Management and Accountability Act 1997* for how public money is dealt with.

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

substitute

Form 2 Oath for Commissioner, Deputy Commissioner, member or special member

(subregulation 9 (1))

Australian Federal Police Act 1979

OATH FOR COMMISSIONER, DEPUTY COMMISSIONER, MEMBER OR SPECIAL MEMBER

I, _____, [**swear/*promise*]:

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 [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] of the Australian Federal Police without fear or favour,

affection or ill will, from this date until I cease to be [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] of the Australian Federal Police.

That, whenever performing duty in the Australian Capital Territory, I will cause Her Majesty's peace to be kept and preserved, and prevent, to the best of my power, offences against that peace.

And that, while I continue to be [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] 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/*a god recognised by his or her religion*]!

* Delete if not applicable

Form 3 Affirmation for Commissioner, Deputy Commissioner, member or special member

(subregulation 9 (1))

Australian Federal Police Act 1979

AFFIRMATION FOR COMMISSIONER, DEPUTY COMMISSIONER, MEMBER OR SPECIAL MEMBER

I, _____, 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 [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] of the Australian Federal Police without fear or favour, affection or ill will, from this date until I cease to be [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] of the Australian Federal Police.

That, whenever performing duty in the Australian Capital Territory, I will cause Her Majesty's peace to be kept and preserved, and prevent, to the best of my power, offences against that peace.

And that, while I continue to be [**the Commissioner/*a Deputy Commissioner/*a person declared to be a member under section 40B of the Act/*a special member*] of the Australian Federal Police, I will, to the best of my skill and knowledge, faithfully discharge all my duties according to law.

* Delete if not applicable

Form 3A Oath for protective service officer or special protective service officer

(subregulation 9 (2))

Australian Federal Police Act 1979

OATH FOR PROTECTIVE SERVICE OFFICER OR SPECIAL PROTECTIVE SERVICE OFFICER

I, _____, [**swear/*promise*]:

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/*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 a [**protective service officer/*special protective service officer*] of the Australian Federal Police.

And that, while I continue to be a [**protective service officer/*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/*a god recognised by his or her religion*]!

* Delete if not applicable

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

(subregulation 9 (2))

Australian Federal Police Act 1979

AFFIRMATION FOR PROTECTIVE SERVICE OFFICER OR SPECIAL PROTECTIVE SERVICE OFFICER

I, _____, 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/*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 a [**protective service officer/*special protective service officer*] of the Australian Federal Police.

And that, while I continue to be a [**protective service officer/*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.

* Delete if not applicable

[9] After Schedule 1A

insert

Schedule 1B Prescribed awards and prescribed criteria

(regulation 14)

Item	Prescribed awards	Prescribed criteria
1	Commissioner's Commendation for Bravery	The person has, in the performance of his or her duties, demonstrated an act of bravery and placed himself or herself at substantial risk of personal injury

Item	Prescribed awards	Prescribed criteria
2	Commissioner's Commendation for Conspicuous Conduct	The person has, in the performance of his or her duties, demonstrated outstanding dedication to duty in circumstances demanding tenacity of a high order
3	Commissioner's Commendation for Excellence in Overseas Service	The person has, in the performance of his or her duties, demonstrated excellence in overseas service while undertaking the AFP's core business and adhering to the AFP's corporate values
4	Commissioner's Commendation for Hazardous Overseas Service	The person has, in the performance of his or her duties, demonstrated devotion to duty in overseas service while operating in hazardous circumstances or a hazardous environment
5	Commissioner's Group Citation for Bravery	An identified group of persons has, in the performance of their duties, demonstrated collective acts of bravery and placed themselves at substantial risk of personal injury
6	Commissioner's Group Citation for Conspicuous Conduct	An identified group of persons has, in the performance of their duties, demonstrated an outstanding collective dedication to duty in circumstances demanding tenacity of a high order
7	Commissioner's Group Citation for Excellence in Overseas Service	An identified group of persons has, in the performance of their duties, demonstrated collective excellence in overseas service while undertaking the AFP's core business and adhering to the AFP's corporate values
8	Commissioner's Group Citation for Hazardous Overseas Service	An identified group of persons has, in the performance of their duties, demonstrated collective devotion to duty in overseas service while operating in hazardous circumstances or a hazardous environment
9	Commissioner's Medal for Excellence	Excellence by a person or an identified group of persons in: <ul style="list-style-type: none"> (a) pursuing the AFP's core business outcomes to the highest level; and (b) encompassing the AFP's corporate values to the highest level

Item	Prescribed awards	Prescribed criteria
10	Commissioner's Medal for Innovation	Outstanding innovation by a person or an identified group of persons in: <ol style="list-style-type: none"> (a) pursuing the AFP's core business outcomes to the highest level; and (b) encompassing the AFP's corporate values to the highest level
11	Australian Federal Police Operations Medal	The person has been involved in a significant operation or activity
12	Australian Federal Police Service Medal	The person has given 10 cumulative years of diligent service to the AFP commencing on or after 19 October 1979
13	Australian Protective Service Medal	The person has given 10 cumulative years of diligent service to the Australian Protection Service during the period beginning on 20 October 1984 and ending on 30 June 2004

[10] Schedule 2, table, item 1, column 3

omit

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insert

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Note

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