



# **Australian Federal Police Amendment (Workplace Drug Testing and Other Measures) Regulation 2015**

## **Select Legislative Instrument No. 249, 2015**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),  
Governor-General of the Commonwealth of Australia, acting with the  
advice of the Federal Executive Council, make the following regulation.

Dated 10 December 2015

Peter Cosgrove  
Governor-General

By His Excellency's Command

Michael Keenan  
Minister for Justice

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*OPC61144 - A*



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## 1 Name

This is the *Australian Federal Police Amendment (Workplace Drug Testing and Other Measures) Regulation 2015*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	15 December 2015

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Australian Federal Police Act 1979*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Australian Federal Police Regulations 1979*

#### **1 Regulation 2 (definition of *accredited pathology laboratory*)**

Repeal the definition.

#### **2 Regulation 2**

Insert:

***authorised laboratory*** means:

- (a) a facility accredited by the National Association of Testing Authorities, Australia; or
- (b) a facility covered by a determination in force under regulation 13QA.

***government agency*** means:

- (a) a Department of the Commonwealth or of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth or of a State or Territory.

***head*** of a government agency means:

- (a) in relation to a Commonwealth government agency that is a Department of the Commonwealth—the Secretary of the Department; or
- (b) in relation to a Commonwealth government agency that is a body established for a public purpose—the person holding, or performing the duties of, the principal office in respect of the body; or
- (c) in relation to a State or Territory government agency—the person holding, or performing the duties of, the principal office in respect of the agency.

***integrity agency*** for a State or Territory means any of the following:

- (a) the New South Wales Crime Commission;
- (b) the Independent Commission Against Corruption of New South Wales;

- (c) the Police Integrity Commission of New South Wales;
- (d) the Independent Broad-based Anti-corruption Commission of Victoria;
- (e) the Crime and Corruption Commission of Queensland;
- (f) the Corruption and Crime Commission of Western Australia;
- (g) the Independent Commissioner Against Corruption of South Australia;
- (h) the Integrity Commission of Tasmania.

**3 Subregulation 5(1)**

Omit “an AFP appointee”, substitute “an AFP employee”.

**4 Paragraphs 5(1)(a) and (b)**

Omit “appointee”, substitute “employee”.

**5 Subregulation 5(2)**

Omit “an AFP appointee”, substitute “an AFP employee”.

**6 Paragraphs 5(2)(a) and (b)**

Omit “appointee”, substitute “employee”.

**7 Subregulation 5(3)**

Repeal the subregulation, substitute:

- (3) An AFP employee who is suspended under this regulation is entitled to be paid remuneration in accordance with the Act but is not entitled to penalties, composites, overtime or other allowances while suspended.

**8 Paragraphs 5(5)(a) to (c)**

Omit “appointee”, substitute “employee”.

**9 After regulation 5**

Insert:

**5A Prescribed persons may require AFP employees to undergo alcohol screening tests, alcohol breath tests or prohibited drug tests etc.**

- (1) For the purposes of paragraph 40J(1)(aa) of the Act, an authorised person (within the meaning of regulation 13E) may give an AFP employee who is suspended from duty a written direction requiring him or her to do one or more of the following:
  - (a) undergo an alcohol screening test;
  - (b) undergo a breath test;
  - (c) provide a body sample of a kind specified in the direction for a prohibited drug test.
- (2) An AFP employee must comply with a direction given to him or her under subregulation (1).
- (3) If:
  - (a) in accordance with a direction under subregulation (1), an AFP employee undergoes a breath test; and
  - (b) the breath test indicates the presence of alcohol;the employee may provide a sample of his or her blood for the purpose of a blood test, in accordance with these Regulations.

Note: Subdivision 2.4B.3 sets out rules about conducting blood tests and prohibited drug tests.

**10 Subregulation 13F(1)**

Omit “subsection 40M (1) or 40N (1)”, substitute “subregulation 5A(1) or subsection 40M(1) or 40N(1)”.

**11 Subregulation 13F(4)**

Omit “for section 40M or 40N”, substitute “for the purposes of subregulation 5A(1) or subsection 40M(1) or 40N(1), (2) or (4)”.

**12 Subregulation 13H(1)**

Omit “for section 40M or 40N”, substitute “for the purposes of subregulation 5A(1) or subsection 40M(1) or 40N(1), (2) or (4)”.

**13 Subregulation 13H(4)**

Repeal the subregulation, substitute:



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- (4) If the AFP employee or special member is required to provide a sample of hair for the purpose of a prohibited drug test, the person collecting the sample:
- (a) must use the least painful technique known and available to the person to collect the sample; and
  - (b) must collect only the amount of hair necessary for the conduct of the test; and
  - (c) may collect the sample from any part of the body of the AFP employee or special member, other than:
    - (i) the genital or anal area; or
    - (ii) the buttocks.

#### **14 Regulation 13K**

Repeal the regulation, substitute:

#### **13K Security and destruction of body samples**

- (1) This regulation applies in relation to a body sample that was provided by an AFP employee or a special member for the purpose of a blood test or a prohibited drug test conducted for the purposes of subregulation 5A(1) or subsection 40M(1) or 40N(1), (2) or (4) of the Act.
- (2) The body sample must be kept in a secure location until such time as it is destroyed in accordance with this regulation.
- (3) The body sample must be destroyed:
- (a) if the body sample indicates the presence of alcohol or prohibited drugs—no later than 3 years after the day the test was conducted; or
  - (b) in any other case—no later than 28 days after the day the test was conducted.
- (4) However, if the body sample is of a kind mentioned in paragraph (3)(a), it need not be destroyed if the Commissioner determines, in writing, that it should be retained, for such longer period as specified in the determination, for the purpose of:
- (a) determining whether the AFP employee or special member who provided the body sample (or any other AFP employee or special member) has committed an offence or failed to comply with AFP professional standards; or

- (b) assessing the continuing suitability of, as the case requires:
  - (i) the AFP employee for employment as an AFP employee; or
  - (ii) the special member for appointment as a special member; or
- (c) use in any of the following:
  - (i) proceedings in relation to a decision of the Commissioner to terminate the employment of the AFP employee or the appointment of the special member;
  - (ii) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
  - (iii) proceedings in tort against the Commonwealth that are instituted by the AFP employee or special member.

Note: Information about a body sample of an AFP employee or a special member that indicates the presence of alcohol or prohibited drugs may be provided to certain Commonwealth, State and Territory law enforcement, national security and anti-corruption bodies for the purposes of security and character clearances and for intelligence gathering in relation to criminal activities (see subregulation 13L(2)).

- (5) A body sample that is retained for a longer period in accordance with subregulation (4) must be destroyed no later than the last day of the longer period.
- (6) This regulation does not apply to an unanalysed body sample.

Note: An unanalysed body sample may be destroyed if it is not collected by the AFP employee or special member within 6 months of being informed of the result of the blood test or prohibited drug test (see subregulation 13T(3)).

### **13KA Security and destruction of records relating to body samples from alcohol screening tests, breath tests, blood tests and drug tests**

- (1) This regulation applies in relation to a record of a body sample that is relevant to an alcohol screening test, a breath test, a blood test or a prohibited drug test conducted for the purposes of subregulation 5A(1) or subsection 40LA(1), 40M(1) or 40N(1), (2) or (4) of the Act in relation to an AFP appointee.
- (2) The record must be kept in a secure location until such time as it is destroyed in accordance with this regulation.

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- (3) The record must be destroyed if:
    - (a) the body sample did not indicate the presence of alcohol or prohibited drugs; and
    - (b) the AFP appointee who provided the body sample ceases, for any reason, to be an AFP appointee.
  - (4) A record of a body sample that must be destroyed under subregulation (3) must be destroyed as soon as practicable after the AFP appointee who provided the body sample ceases to be an AFP appointee.
  - (5) Despite subregulations (3) and (4), the record need not be destroyed if:
    - (a) it relates to any of the following:
      - (i) the detection of alcohol or prohibited drugs;
      - (ii) the name of any prohibited drugs detected;
      - (iii) the quantity of any alcohol or prohibited drugs detected;
      - (iv) how a body sample was provided or analysed;
      - (v) whether a urine sample was provided, or analysed, in accordance with the standard mentioned in regulation 13V; and
    - (b) it is used for compiling a statistical database; and
    - (c) it does not include information that may be used to identify the AFP appointee who provided the body sample to which the record relates.
  - (6) A record that is retained in accordance with subregulation (5) must be destroyed no later than the day determined, in writing, by the Commissioner.

## **15 Regulation 13L**

Omit all the words before paragraph (a), substitute:

- (1) A person to whom section 60A of the Act applies may disclose information revealed by an alcohol screening test, a blood test or a prohibited drug test conducted for the purposes of subsection 40LA(1), 40M(1) or 40N(1), (2) or (4) of the Act in relation to an AFP appointee only:

**16 Paragraph 13L(g)**

Omit “AFP employee’s or special member’s”, substitute “AFP appointee’s”.

**17 Paragraph 13L(h)**

Omit “AFP employee or special member”, substitute “AFP appointee”.

**18 At the end of regulation 13L**

Add:

- (2) The Commissioner may disclose information revealed by an alcohol screening test, a blood test or a prohibited drug test conducted for the purposes of subsection 40LA(1), 40M(1) or 40N(1), (2) or (4) of the Act in relation to an AFP appointee to any of the following:
- (a) the head of a Commonwealth government agency;
  - (b) the head of a police force of a State or Territory;
  - (c) the head of an integrity agency for a State or Territory;
  - (d) the head of another State or Territory government agency;
- if the Commissioner is satisfied, having regard to the functions of the agency concerned, that it is appropriate to do so for the purposes of:
- (e) conducting a security or character clearance of a person who is, or was, an AFP employee or a special member; or
  - (f) determining whether a person who is, or was, an AFP employee has committed an offence or failed to comply with AFP professional standards; or
  - (g) assessing:
    - (i) the suitability for employment of a person who is, or was, an AFP employee; or
    - (ii) the suitability for appointment of a person who is, or was a special member; or
  - (h) intelligence gathering in relation to criminal activity.

Note: It is an offence to make a record of any prescribed information or to divulge or communicate any prescribed information to another person, other than for the purposes of the Act or the regulations (see section 60A of the Act).

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**19 Regulation 13Q (definition of *analyst*)**

Omit “accredited pathology laboratory”, substitute “authorised laboratory”.

**20 Regulation 13Q (definition of *unanalysed sample*)**

Repeal the definition.

**21 After regulation 13Q**

Insert:

**13QA Commissioner may determine that a facility is an authorised laboratory**

- (1) The Commissioner may, in writing, determine that a facility (other than a facility accredited by the National Association of Testing Authorities, Australia) is an authorised laboratory for the purpose of these Regulations.
- (2) If the Commissioner authorises a facility under subregulation (1):
  - (a) the Commissioner must give the facility a certificate stating that it is an authorised laboratory; and
  - (b) an employee of the facility must, if requested to do so, show the certificate to an AFP employee or special member who is directed to undergo a test to collect body samples other than blood.

**13QB Approval of facility to collect body samples**

- (1) The Commissioner may, in writing, approve a facility (other than a facility accredited by the National Association of Testing Authorities, Australia) to collect body samples other than blood.
- (2) If the Commissioner authorises a facility under subregulation (1):
  - (a) the Commissioner must give the facility a certificate stating that it is approved to collect body samples other than blood; and
  - (b) an employee of the facility must, if requested to do so, show the certificate to an AFP employee or special member who is directed to undergo a test to collect body samples other than blood.

**13QC Approval of courses—collecting body samples**

The Commissioner may, in writing, approve a training course in collecting body samples other than blood.

**22 Subregulation 13R(1)**

Omit “(1)”.

**23 At the end of subregulation 13R(1)**

Add:

; and (d) arrange for both sealed containers to be sent to an authorised laboratory.

**24 Subregulation 13R(2)**

Repeal the subregulation.

**25 Subregulation 13S(1)**

Omit “accredited pathology laboratory”, substitute “authorised laboratory”.

**26 Subregulation 13S(3)**

Omit “If 2 containers were submitted to the accredited pathology laboratory under paragraph 13R (2) (a), the”, substitute “The”.

**27 Subregulation 13T(1)**

Repeal the subregulation, substitute:

- (1) As soon as practicable after conducting an analysis of a body sample provided by an AFP employee or a special member for a blood test or prohibited drug test, the analyst must give a certificate to an authorised person.

**28 Paragraph 13T(2)(a)**

Repeal the paragraph, substitute:

- (a) the unique identification number for the sample;

**29 Paragraphs 13T(2)(c) and (d)**

Omit “accredited pathology laboratory”, substitute “authorised laboratory”.

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**30 Subregulation 13T(3)**

Repeal the subregulation, substitute:

- (3) As soon as practicable after receiving the certificate under subregulation (1), an authorised person must give the AFP employee or special member:
- (a) a copy of the certificate; and
  - (b) a written notice informing the AFP employee or special member that:
    - (i) he or she may collect the unanalysed sample, and the result of the analysis from the analysed sample, from the authorised laboratory within 6 months of being informed of the result of the blood test or prohibited drug test; and
    - (ii) he or she may have the unanalysed sample independently tested by another authorised laboratory; and
    - (iii) the unanalysed sample may be destroyed if it is not collected within 6 months of the AFP employee or special member being informed of the result of the blood test or prohibited drug test.

**31 Subregulation 13U(1)**

Omit “and 2 containers were submitted to the accredited pathology laboratory under paragraph 13R (2) (a)”.

**32 Regulation 13V**

Repeal the regulation, substitute:

**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—2008* “Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine” as those procedures exist at the commencement of the *Australian Federal Police Amendment (Workplace Drug Testing and Other Measures) Regulation 2015*.

### 33 After Part 6

Insert:

## Part 7—Application and transitional provisions

### Division 1—Provisions relating to the Australian Federal Police Amendment (Workplace Drug Testing and Other Measures) Regulation 2015

#### 36 Definitions

In this Part:

**amending regulation** means the *Australian Federal Police Amendment (Workplace Drug Testing and Other Measures) Regulation 2015*.

**commencement day** means the day the amending regulation commences.

#### 37 Application of amendments

- (1) The amendments made by items 2, 3, 4, 5, 6, 8, 14, 15, 18, 22, 23, 24, 26, 27, 28, 30 and 31 of Schedule 1 to the amending regulation apply in relation to body samples and other records relevant to an alcohol screening test, a breath test, a blood test or a prohibited drug test conducted on or after the commencement day.
- (2) Subregulation 5(3) and regulation 5A, as inserted by the amending regulation, apply in relation to an AFP employee who is suspended on or after the commencement day (whether the suspension began before, or begins on or after, that day).
- (3) The amendment of regulation 13V made by Schedule 1 to the amending regulation applies in relation to a sample that is collected on or after the commencement day.

#### 38 Repeal of this Part

This Part is repealed on 1 July 2016.



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**34 Schedule 1A (at the end of the cell at table item 1, column headed “Authorised persons”)**

Add:

A person who has completed a training course in collecting body samples other than blood approved under regulation 13QC

**35 Schedule 1A (at the end of the cell at table item 2, column headed “Authorised persons”)**

Add:

Any other person who is qualified to take blood samples

**36 Schedule 1A (at the end of the cell at table item 3, column headed “Authorised persons”)**

Add:

An employee, with appropriate training, of a facility approved under regulation 13QB to collect body samples other than blood

A person who has completed a training course in collecting body samples other than blood approved under regulation 13QC

**37 Schedule 1A (at the end of the cell at table item 4, column headed “Authorised persons”)**

Add:

An employee, with appropriate training, of a facility approved under regulation 13QB to collect body samples other than blood

A person who has completed a training course in collecting body samples other than blood approved under regulation 13QC