



Australian Federal Police Regulations 2018

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 regulations.

Dated 16 August 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Home Affairs
Minister for Immigration and Border Protection

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Part 1—Preliminary

1 Name

This instrument is the *Australian Federal Police Regulations 2018*.

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.	17 August 2018

Note: This table relates only to the provisions of this instrument as originally made.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 Schedule 4

Each instrument that is specified in Schedule 4 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) AFP appointee;
- (b) blood test;
- (c) body sample;
- (d) breath test;
- (e) prohibited drug test;
- (f) protective service functions.

In this instrument:

Act means the *Australian Federal Police Act 1979*.

AFP means Australian Federal Police.

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AFP records means the records of the Australian Federal Police.

analyst means a person at an authorised laboratory who performs the quantification of a body sample taken by an authorised person in conducting a test.

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

- (a) for a breath test conducted in a State or the Australian Capital Territory—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, the Jervis Bay Territory or a foreign country—under a law of a State or the Australian Capital Territory.

Note: A State includes the Northern Territory—see the definition of **State** in subsection 4(1) of the Act.

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 section 40.

authorised person means:

- (a) in relation to giving directions under sections 40M and 40N of the Act—a person authorised under section 31 of this instrument to give such directions; or
- (b) in relation to conducting tests and operating equipment mentioned in paragraph 40P(1)(b) of the Act—a person authorised under section 32 of this instrument to conduct such tests and operate such equipment.

claimable property means property, including liquid property, that has lawfully come into the possession of an AFP employee, a special member or a special protective service officer and:

- (a) includes property that:
 - (i) has been seized or found; or
 - (ii) is held for evidentiary use in legal proceedings; and
- (b) does not include:
 - (i) property that is owned or is held, under any rights to lawful possession (other than those referred to in paragraph (a)), by the AFP; or
 - (ii) property that the Commissioner has directed under section 74 be disposed of (disposal of other property that has been found); or
 - (iii) property that the Commissioner has directed under section 76 be disposed of (immediate disposal of property on the grounds of public health and safety or offensive nature).

cost to AFP for use of AFP appointee's time, in relation to making an AFP appointee available to render a service, means:

- (a) if the AFP appointee is made available for a minimum of 4 hours and renders the service for 4 hours or less—the amount of remuneration

payable to the AFP appointee for 4 hours plus 150.2% of the AFP appointee's base salary for 4 hours; or

- (b) in any other case—the amount of remuneration payable to the AFP appointee for the period when the AFP appointee renders the service plus 150.2% of the AFP appointee's base salary for the period.

debtor means the Commissioner, a Deputy Commissioner or an AFP employee who owes a judgment debt.

engage in conduct has the same meaning as in the *Criminal Code*.

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 any other government agency—the person holding, or performing the duties of, the principal office in respect of the agency.

illicit materials has the same meaning as **illicit goods** has in the *Crimes Act 1914*.

illicit-related materials means any materials that were, or the Commissioner is satisfied have been, used in the production, manufacture, transport or concealment of illicit materials.

integrity agency means any of the following:

- (a) the New South Wales Crime Commission;
- (b) the Independent Commission Against Corruption of New South Wales;
- (c) the Law Enforcement Conduct 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.

judgment creditor: a person is a **judgment creditor** for a debtor if a judgment has been given in favour of the person for a sum of money owed by the debtor.

judgment debt includes interest on a judgment debt.

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.

medical practitioner has the same meaning as in the *Health Insurance Act 1973*.

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Merit Protection Commissioner means the Merit Protection Commissioner appointed under the *Public Service Act 1999*.

net salary of a debtor: see subsection 24(5).

paying officer, for a debtor, means:

- (a) if the debtor is the Commissioner—a person appointed under subparagraph 20(2)(d)(ii); or
- (b) in any other case—a person appointed under subsection 20(1).

prescribed property of a person: see subsection 62(4).

registered nurse has the same meaning as in the *Health Insurance Act 1973*.

remuneration, for an AFP appointee, means the sum of the following:

- (a) the base salary of the AFP appointee;
- (b) any penalties, composites, overtime and other allowances payable to the AFP appointee.

returnable property: see subsection 62(3).

superannuation scheme has the same meaning as in Part VA of the Act.

total gross salary of a debtor: see subsection 24(6).

Part 2—Employment

Division 1—AFP employment decisions

6 Values for AFP employment decisions

For the purposes of paragraph 70(k) of the Act, AFP employment decisions must be based on the following values:

- (a) impartiality and professionalism;
- (b) merit;
- (c) freedom from discrimination;
- (d) openness and accountability;
- (e) fairness;
- (f) equity in employment;
- (g) effectiveness.

7 Competence and qualifications of commissioned police officers

For the purposes of subsection 40D(3) of the Act, a member of the Australian Federal Police is competent and qualified to be a commissioned police officer if the member:

- (a) is at least 18 years of age; and
- (b) has the experience, qualifications and training necessary for the effective performance of the duties of a commissioned police officer; and
- (c) having regard to any other factors that are relevant to the performance of the duties of a commissioned police officer, is suitable to be a commissioned police officer.

8 Suspension from duties

For the purposes of paragraph 40J(1)(a) of the Act, the Commissioner may, in writing, suspend an AFP employee from duties:

- (a) if the Commissioner believes on reasonable grounds that the AFP employee:
 - (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 employee to contest an election to a non-parliamentary body;
or
- (c) if both of the following apply:
 - (i) the AFP employee is charged with having committed a summary or indictable offence against a law of the Commonwealth, a State, a Territory or another country;
 - (ii) the Commissioner believes on reasonable grounds that, because of the nature of the offence, the employee should not continue to perform the employee's duties until the charge has been resolved.

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9 Suspension from duties—remuneration

- (1) This section is made for the purposes of paragraph 40J(1)(a) of the Act in relation to an AFP employee who is suspended from duties under section 8 of this instrument.
- (2) The Commissioner may, in writing, direct that the suspension from duties of the AFP employee under section 8 is without remuneration. If the Commissioner does so, the AFP employee is (subject to subsection 40J(3) of the Act) not entitled to be paid remuneration while suspended.
- (3) Otherwise, the AFP employee is entitled to be paid, in accordance with the Act, only that part of the AFP employee's remuneration that consists of the AFP employee's base salary while suspended.

10 Ending suspension from duties

- (1) For the purposes of paragraph 40J(1)(a) of the Act, the Commissioner must, in writing, end the suspension of an AFP employee under section 8 of this instrument if:
 - (a) all of the grounds on which the AFP employee was suspended are disposed of in accordance with this section; or
 - (b) the Commissioner is satisfied that it is otherwise appropriate to end the suspension.

Conduct contravening AFP professional standards and corrupt conduct

- (2) For an AFP employee suspended under paragraph 8(a) in relation to conduct that the employee has, or may have, engaged in, the grounds are disposed of if:
 - (a) the Commissioner no longer reasonably believes that the AFP employee has or may have engaged in that conduct; or
 - (b) the AFP conduct issue in relation to conduct mentioned in that paragraph has been dealt with under Part V of the Act, and:
 - (i) action, other than termination action, is to be taken in relation to the conduct issue; or
 - (ii) the Commissioner has determined, under section 40TF of the Act, that no further action is to be taken in relation to the conduct issue.

Contesting an election

- (3) For an AFP employee suspended under paragraph 8(b) to allow the employee to contest an election to a non-parliamentary body, the grounds are disposed of if the employee fails to be elected to the non-parliamentary body.

Commission of an offence

- (4) For an AFP employee suspended under paragraph 8(c) in relation to the charging of the employee with an offence, the grounds are disposed of if the charge is resolved without a finding of guilt being made against the employee.
- (5) For the purposes of subsection (4), a charge for an offence is resolved in relation to a person at the latest of the following times:

- (a) when:
 - (i) the charge is withdrawn; or
 - (ii) the charge is dismissed; or
 - (iii) the person is not committed on the charge following a committal hearing; or
 - (iv) the person is acquitted of the offence; or
 - (v) the person is sentenced for the offence; or
 - (vi) the person is dealt with by being the subject of an order made as a consequence of a finding of guilt; or
 - (vii) the charge is otherwise finally dealt with;
- (b) if an appeal relating to the charge is not lodged within the period for lodging such an appeal—when that period ends;
- (c) if an appeal relating to the charge is lodged—when the appeal lapses or is finally determined.

Despite paragraph (b), if an appeal relating to the charge is lodged after that period ends, the charge ceases to be resolved until that appeal lapses or is finally determined.

11 Suspension from duties—directions relating to drug testing

- (1) For the purposes of paragraph 40J(1)(aa) of the Act, an authorised person who is authorised to give directions under this section may give an AFP employee who is suspended from duties under section 8 of this instrument a written direction requiring the AFP employee 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.

Note 1: The authorised person is authorised under section 31.

Note 2: See section 33 in relation to the conduct of alcohol, breath and drug tests.

- (2) The AFP employee must comply with the direction.

12 Suspension of declarations under section 40B of the Act

- (1) For the purposes of subsection 23(2) and paragraph 40J(1)(a) of the Act, the Commissioner may suspend, for a specified period of time, a declaration that is in force under section 40B of the Act in respect of an AFP employee. The suspension must be in writing.
- (2) The declaration is taken not to be in force during the period of the suspension.

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Division 2—Undertakings, oaths and affirmations relating to the performance of duties

13 Prescribed forms—undertakings

For the purposes of paragraphs 36(2)(a), (3)(a), (4)(a), (4A)(a) and (4B)(a) of the Act, the undertaking in Form 1 of Schedule 1 is prescribed.

14 Prescribed forms—oaths and affirmations

Commissioner, Deputy Commissioners, members and special members

- (1) For the purposes of subsection 36(1) and paragraphs 36(2)(b), (3)(b) and (4)(b) of the Act:
 - (a) the oath in Form 2 of Schedule 1 is prescribed; and
 - (b) the affirmation in Form 3 of Schedule 1 is prescribed.

Protective service officers and special protective service officers

- (2) For the purposes of paragraphs 36(4A)(b) and (4B)(b) of the Act:
 - (a) the oath in Form 4 of Schedule 1 is prescribed; and
 - (b) the affirmation in Form 5 of Schedule 1 is prescribed.

Religious text not necessary for making and subscribing oaths

- (3) It is not necessary that a religious text be used in making and subscribing an oath mentioned in this section.

Division 3—Election candidates

15 Resignations to contest elections

- (1) For the purposes of paragraph 70(g) of the Act, an AFP employee may resign from the AFP for the purpose of becoming a candidate at an election of a member or members of:
 - (a) the Parliament of the Commonwealth or a State; or
 - (b) the Legislative Assembly for the Australian Capital Territory or of the Northern Territory.
- (2) However, the AFP employee may not resign for that purpose earlier than the date of issue of the writ for the election or later than the date on which the nominations for the election close.
- (3) The AFP employee must, at least 2 weeks before the day on which the AFP employee proposes to resign, give the Commissioner notice in writing specifying that day.

16 Reinstatement of persons who resign to contest elections

- (1) For the purposes of paragraph 70(h) of the Act, this section applies to a person who:
 - (a) resigns from the AFP under section 15 of this instrument for the purpose of contesting an election; and
 - (b) fails to be nominated at the election or, if nominated, fails to be elected at the election; and
 - (c) applies to be reinstated as an AFP employee within 2 months after the declaration of the result of the election (or, if the result is disputed, within 2 months after a court of disputed returns decides the petition disputing the result, or the petition is withdrawn or lapses).
- (2) The person must be again engaged as an AFP employee on the same terms and conditions as would apply to the person if the person had not resigned.

Effect of declarations after person re-engaged

- (3) Subsection (4) applies if any of the following declarations was in force in relation to the person immediately before the person resigned:
 - (a) a declaration under subsection 9(2A) or (2B) of the Act (a declaration that a member is of a particular rank);
 - (b) a declaration under section 40B of the Act (a declaration that an AFP employee is a member of the AFP);
 - (c) a declaration under section 40D of the Act (a declaration that a member is a commissioned police officer).
- (4) Unless it would have ceased to be in force sooner, the declaration is taken to continue to be in force from the day when the person is again engaged until it would otherwise cease to be in force.

Part 2 Employment

Division 3 Election candidates

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Period of resignation recognised as service

- (5) The period between the person's resignation and the day the person is again engaged as an AFP employee is to be recognised as service for all purposes.

Division 4—Financial statements

17 Storage, handling, confidentiality and use of financial statements

For the purposes of paragraph 70(j) of the Act, a statement given under section 40L of the Act (financial statements):

- (a) is confidential; and
- (b) must be stored in a way that ensures confidentiality is maintained; and
- (c) must be handled only:
 - (i) by the Commissioner or a person authorised by the Commissioner for the purpose of handling the statement or a statement of that kind; and
 - (ii) for the purpose for which it was collected; and
- (d) must not be disclosed or used, and any information contained in the statement must not be disclosed or used, except for the purpose for which it was collected.

Division 5—Deductions from salaries to satisfy judgment debts

18 Purposes and application of this Division

- (1) This Division is made for the purposes of paragraph 70(f) of the Act.
- (2) This Division 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.

19 Application of State or Territory laws

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.

20 Paying officers

- (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 debtor 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 subsection (1); and
 - (b) the Commissioner must act under this subsection without considering whether the making of deductions from the Commissioner's salary is required; and
 - (c) the Commissioner must, in writing, delegate the Commissioner's power under subsection (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 to satisfy the judgment debt; and
 - (ii) if the senior executive AFP employee decides that the making of deductions is required to satisfy the judgment debt—appoint, in writing, a person as a paying officer for the Commissioner 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 Division of the Commissioner's debt, other than:
 - (i) making the delegation mentioned in paragraph (c); and
 - (ii) if a paying officer is appointed for the Commissioner—assisting the paying officer in satisfying the judgment debt.
- (3) If a person is appointed as a paying officer for a debtor:

- (a) the appointment authorises the person to act as a paying officer only in relation to that debtor; 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 appointed as a paying officer for the debtor.

21 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 for the debtor has received:
 - (i) a statutory declaration, made by a judgment creditor for the debtor, that the judgment debt exists and has not been discharged; and
 - (ii) a copy of the judgment to which the judgment debt relates, certified by the Registrar or other appropriate officer of the relevant court; and
 - (b) the paying officer has given the debtor a notice in accordance with subsection (2); and
 - (c) the debtor does not, within the time specified in the notice, 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 section 22.

- (2) The paying officer for the debtor must:
- (a) notify the debtor, in writing, as soon as practicable after being satisfied that the requirement mentioned in paragraph (1)(a) is met, that it is proposed to make deductions from the debtor's salary; 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.
- (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, 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 section 24; 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 continue to make deductions only 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 for the debtor.

22 More than one judgment debt

- (1) If more than one judgment debt exists against a debtor, the paying officer for the debtor:

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- (a) must deal with the judgment debts in the order in which the statutory declarations referred to in subparagraph 21(1)(a)(i) 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 such statutory declarations were made have been satisfied.
- (2) If the paying officer for the debtor receives 2 or more statutory declarations at the same time for the payment of judgment debts against the 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.

23 Effect of deductions

If an amount is paid to a judgment creditor for a debtor 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.

24 Rate of deductions

- (1) For the purposes of paragraph 21(3)(a), the rate at which a deduction is to be made from the net salary of a debtor on a pay day for the debtor is 20%, unless subsection (2), (3) or (4) applies.

Serious financial hardship

- (2) The paying officer for the debtor 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 deductions were not reduced.

Requesting increase in rate of deductions

- (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) As soon as practicable after the debtor asks the paying officer, in writing, to reduce the rate of deductions increased under subsection (3), the paying officer must reduce the rate in accordance with this section.

Meaning of net salary

- (5) The *net salary* of a debtor is the total gross salary of the debtor, 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 fund under a superannuation scheme 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.

Meaning of total gross salary

- (6) The **total gross salary** of a debtor is the amount of:
 - (a) if the debtor is the Commissioner—the sum of:
 - (i) the debtor's gross salary as the Commissioner (not including any payment of compensation under a law of the Commonwealth, a State or the Australian Capital Territory that is about workers' compensation); and
 - (ii) the allowances, in the nature of salary, that are paid to the debtor; and
 - (b) if the debtor is an AFP appointee—the debtor's remuneration as an AFP appointee (not including any payment of compensation under a law of the Commonwealth, a State or the Australian Capital Territory that is about workers' compensation);without any reduction for salary sacrifice arrangements, or other arrangements for a similar purpose.

25 Administration of deductions

- (1) A paying officer for a debtor may:
 - (a) require the judgment creditor for the debtor 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 appointment or 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.

26 Recovery of overpayments

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

Division 6—Conduct of AFP appointees

27 Intentionally prejudicing police services or protective service functions

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

- (a) fail to give prompt attention to the AFP appointee's duties;
- (b) be absent from duty without authority.

28 Information—unauthorised disclosures

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 another AFP appointee to whom the matter relates or to any other person:

- (a) a matter in relation to information given by a person under Part V of the Act (professional standards and AFP conduct and practices issues) 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 (dealing with category 3 conduct issues and corruption issues);
- (d) a matter in relation to an inquiry under Division 4 of Part V of the Act (Ministerially directed inquiries).

29 Information—unauthorised use or access

- (1) An AFP appointee must not do either of the following except in the performance of the AFP appointee's duties:
 - (a) use or communicate to another person any information that comes to the AFP appointee's knowledge, or into the AFP appointee's possession, by reason of being an AFP appointee;
 - (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 AFP;
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.

30 Bankrupt AFP appointees

An AFP appointee who becomes a bankrupt must:

- (a) advise the Commissioner as soon as practicable in writing that the AFP appointee is a bankrupt; and

- (b) give the Commissioner any information about the AFP appointee's bankruptcy required by the Commissioner.

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Division 7—Drug and alcohol testing

Subdivision A—General provisions

31 Persons authorised to give directions in relation to drug and alcohol testing

- (1) This section is made for the purposes of paragraph 40P(1)(a) of the Act.
- (2) The Commissioner may, in writing, authorise a person to give a direction under:
 - (a) section 40M or 40N of the Act (which deal with drug and alcohol testing); or
 - (b) section 11 of this instrument (suspension from duties—directions relating to drug testing).
- (3) 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.
- (4) The Commissioner must give a certificate to a person authorised under this section stating that the person is an authorised person.

Note: The certificate is evidence of the matters stated in it (see section 49).

- (5) If requested to do so, an authorised person must show the certificate to an AFP appointee who is directed by that person to undergo a test under section 40M or 40N of the Act or subsection 11(1) of this instrument.

32 Persons authorised to conduct tests and to operate equipment for that purpose

For the purposes of paragraph 40P(1)(b) of the Act, a person specified in column 2 of an item in the following table is authorised:

- (a) to conduct a test specified in column 1 of the item for the purposes of section 40LA, 40M or 40N of the Act or section 11 of this instrument; and
- (b) to operate equipment for the purposes of that test.

Authorised persons		
Item	Column 1 Test	Column 2 Authorised persons
1	Breath test in accordance with section 37	An AFP appointee who has completed a training course, in conducting breath tests, approved under section 38 A member of the police force of a State or Territory who is authorised to conduct a breath test using an approved breath analysis instrument A person who has completed a training course, in collecting body samples other than urine, approved under section 42
2	Blood test in accordance with	A medical practitioner A registered nurse

Authorised persons		
Item	Column 1 Test	Column 2 Authorised persons
	section 43	Any other person who is qualified to take blood samples
3	Prohibited drug test in accordance with section 43	A medical practitioner A registered nurse An employee, with appropriate training, of a facility approved under section 41 to collect body samples other than urine A person who has completed a training course, in collecting body samples other than urine, approved under section 42
4	Prohibited drug test in accordance with section 47	A medical practitioner A registered nurse A person who has completed a training course, in supervising the provision of urine samples, approved under section 48 An employee, with appropriate training, of a facility approved under section 41 to collect body samples other than urine A person who has completed a training course, in collecting body samples other than urine, approved under section 42

33 Conduct of tests—general

- (1) This section is made for the purposes of paragraphs 40J(1)(aa) and 40P(1)(e) of the Act, in relation to the conduct of breath tests, blood tests and prohibited drug tests under sections 40M and 40N of the Act or under a direction given under section 11 of this instrument.
- (2) An authorised person who is authorised to conduct such tests must do so:
 - (a) in a respectful manner; and
 - (b) in circumstances affording reasonable privacy to the AFP appointee directed to undergo the test or to provide a body sample (including a blood sample) for the test.
- (3) A 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 or accoutrements than is necessary for the conduct of the test; or
 - (b) more visual inspection than is necessary for the conduct of the test.
- (4) If practicable, a test must be conducted by a person of the same sex as the AFP appointee directed to undergo the test.
- (5) If an AFP appointee is required to provide a sample of hair for the purpose of a prohibited drug test, an authorised person collecting the sample:
 - (a) must use the least painful technique known and available to the authorised 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 appointee, other than:

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- (i) the genital or anal area; or
- (ii) the buttocks.

34 Security and destruction of body samples

- (1) This section is made for the purposes of paragraph 40P(1)(h) of the Act in relation to:
- (a) the handling of body samples (including samples of blood) provided by an AFP appointee (the *subject*) in connection with blood tests and prohibited drug tests conducted under section 40M or 40N of the Act; and
 - (b) a body sample provided by an AFP employee (the *subject*) under section 11 of this instrument.

Keeping body samples

- (2) The body sample must be kept in a secure location until it is destroyed in accordance with this section.

Destruction of body samples

- (3) A subject's body sample that has been analysed must (subject to subsections (4) and (5)) be destroyed:
- (a) if the body sample indicates the presence of alcohol or a prohibited drug—before the end of 3 years after the test was conducted; or
 - (b) otherwise—as soon as practicable, and no later than 6 months, after the test was conducted.
- (4) However, if the subject's 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 any longer period specified in the determination, for the purpose of:
- (a) determining whether the subject (or any other person who is an AFP appointee) has committed an offence or failed to comply with AFP professional standards; or
 - (b) assessing the continuing suitability of the subject for employment, appointment, engagement, or determination as an AFP appointee, as applicable; or
 - (c) using the sample in any of the following proceedings:
 - (i) if the subject is an AFP employee—proceedings relating to a decision of the Commissioner to terminate the employment of the subject;
 - (ii) if the subject is a special member—proceedings relating to a decision of the Commissioner to terminate the appointment of the subject as a special member;
 - (iii) if the subject is a consultant or independent contractor determined by the Commissioner under section 35 of the Act to be an AFP appointee—proceedings relating to a decision of the Commissioner relating to the engagement of the subject;
 - (iv) proceedings under the *Safety, Rehabilitation and Compensation Act 1988* or any other law of the Commonwealth relating to workers' compensation;

- (v) proceedings in tort against the Commonwealth that are instituted by the subject.

Note: Test results from a body sample of a subject that indicate the presence of alcohol or a prohibited drug may be provided to certain Commonwealth, State and Territory law enforcement, national security or anti-corruption bodies for the purposes of security and character clearances and for intelligence gathering in relation to criminal activities (see subsection 36(3)).

- (5) A body sample that is retained for a longer period in accordance with subsection (4) must be destroyed before the end of the longer period.
- (6) An unanalysed body sample may be destroyed if it is not collected by the subject within 6 months of notice being given of the results of the analysed body sample under subsection 45(3).

35 Security and destruction of test results etc. relating to body samples

- (1) This section is made for the purposes of paragraph 40P(1)(j) of the Act in relation to a record that is relevant to a test conducted on a body sample for the purposes of section 40LA, 40M or 40N of the Act, or section 11 of this instrument, including a test result in relation to a test of the body sample.
- (2) The record must be kept in a secure location until it is destroyed in accordance with this section.
- (3) The record must (subject to subsection (4)) be destroyed if:
 - (a) the test of the relevant body sample did not indicate the presence of alcohol or a prohibited drug; and
 - (b) the AFP appointee who provided the body sample ceases, for any reason, to be an AFP appointee.

The record must be destroyed as soon as practicable after the AFP appointee who provided the body sample ceases to be an AFP appointee (whether paragraph (a) or (b) of this subsection applies).

- (4) Despite subsection (3), the record need not be destroyed if:
 - (a) it relates to any of the following:
 - (i) the detection of alcohol or a prohibited drug;
 - (ii) the name of any prohibited drug detected;
 - (iii) the quantity of any alcohol or prohibited drug 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 subsection 47(2); 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 test results and the record relate.

36 Disclosure of test results

- (1) This section is made for the purposes of paragraph 40P(1)(j) of the Act in relation to results (*test results*) revealed by an alcohol screening test, an alcohol

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breath test, a blood test or a prohibited drug test conducted on an AFP appointee for the purposes of section 40LA, 40M or 40N of the Act.

Disclosure of test results by those covered by section 60A of the Act

- (2) A person to whom section 60A of the Act (secrecy) applies may disclose test results relating to an AFP appointee only:
- (a) if the results are already publicly known; or
 - (b) in accordance with this Division; or
 - (c) for the investigation of an offence or offences generally; or
 - (d) to enable an AFP conduct issue to be dealt with under Part V of the Act (professional standards and AFP conduct and practices issues) and to enable any action to be taken under that Part in relation to the conduct 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 appointee's medical treatment; or
 - (h) if the AFP appointee is the person disclosing the test results; or
 - (i) if the AFP appointee consents in writing to the disclosure.

Disclosure of test results by Commissioner

- (3) The Commissioner may disclose test results to any of the persons mentioned in subsection (4) if the Commissioner is satisfied, having regard to the functions of the agency or police force concerned, that it is appropriate to do so for the purposes of the following:
- (a) conducting a security or character clearance of a person who is, or was, an AFP appointee;
 - (b) determining whether a person who is, or was, an AFP appointee has committed an offence or failed to comply with AFP professional standards;
 - (c) assessing the suitability:
 - (i) for employment, appointment or engagement of a person who is, or was, an AFP appointee; or
 - (ii) for determining that a person who is, or was, an AFP appointee is to be an AFP appointee;
 - (d) intelligence gathering in relation to criminal activity.

Note: It may be 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).

- (4) The Commissioner may disclose test results under subsection (3) to any of the following persons:
- (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.

Subdivision B—Breath tests

37 Procedures to be followed in conducting breath tests

- (1) This section is made for the purposes of paragraphs 40P(1)(e) and (i) of the Act in relation to the conduct of a breath test under section 40M or 40N of the Act.

Use of approved breath analysis instrument

- (2) The breath test must be conducted using an approved breath analysis instrument.

Request for blood test

- (3) An AFP appointee (the **test subject**) who is directed to undergo a breath test may ask the authorised person conducting the test to arrange for the test subject to also undergo a blood test. However, the test subject must still undergo the breath test.
- (4) If the test subject asks for a blood test to be conducted, the authorised person conducting the breath test must take all reasonable steps to contact a person authorised to conduct a blood test.

Certificates

- (5) An authorised person who conducts a breath test on a test subject must sign and give a certificate to the test subject specifying the following matters:
- (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 test subject;
 - (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.

Note: The certificate is evidence of the matters stated in it (see section 49).

38 Approval by Commissioner of training courses

For the purposes of paragraphs 40P(1)(b) and (e) of the Act, the Commissioner may, in writing, approve a training course in conducting breath tests.

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Subdivision C—Blood tests and prohibited drug tests of body samples other than urine

39 Purposes of this Subdivision

This Subdivision is made for the purposes of paragraphs 40P(1)(b), (e), (g), (h) and (i) of the Act in relation to:

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

40 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 purposes of this subsection.

Note: A facility accredited by the National Association of Testing Authorities, Australia is an authorised laboratory—see the definition of *authorised laboratory* in subsection 5(1).

- (2) If the Commissioner determines that a facility is an authorised laboratory for the purposes of subsection (1):
 - (a) the Commissioner must give the facility a certificate stating that it is approved to collect body samples other than urine; and
 - (b) an employee of the facility must, if requested to do so, show the certificate to an AFP appointee who is directed to undergo a test to collect body samples other than urine.
- (3) A person who is an analyst at an authorised laboratory is accredited to conduct analyses in connection with blood tests and prohibited drug tests of body samples other than urine.

41 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 urine.

Note: A facility accredited by the National Association of Testing Authorities, Australia is also an authorised laboratory—see the definition of *authorised laboratory* in subsection 5(1).

- (2) If the Commissioner approves a facility under subsection (1):
 - (a) the Commissioner must give the facility a certificate stating that it is approved to collect body samples other than urine; and
 - (b) an employee of the facility must, if requested to do so, show the certificate to an AFP appointee who is directed to undergo a test to collect body samples other than urine.

42 Approval of courses—collecting body samples

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

43 Taking of body samples

An authorised person conducting a blood test or prohibited drug test who takes a body sample other than urine for the purposes of the 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; and
- (d) arrange for both sealed containers to be sent to an authorised laboratory.

44 Analysis of body samples

- (1) An analyst at an authorised laboratory must conduct an analysis of a portion of a body sample other than urine to determine:
 - (a) the concentration of alcohol in the blood; or
 - (b) whether the body sample contains a prohibited drug.
- (2) An analysis of another portion of the sample must be conducted if the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug in the sample.
- (3) The sample for the second analysis must be taken from the same container from which the earlier sample was taken.

45 Certificates

- (1) As soon as practicable after conducting an analysis of a body sample other than urine provided by an AFP appointee for a blood test or prohibited drug test, the analyst must give a certificate to the authorised person who directed the person to undergo the test.
- (2) The certificate must state the following information:
 - (a) the unique identification number for the sample;
 - (b) the date on which the sample was taken;
 - (c) the date on which the sample was received in the authorised laboratory for analysis;
 - (d) the authorised laboratory identification number of the sample;
 - (e) the date on which 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.

Note: The certificate is evidence of the matters stated in it (see section 49).

- (3) As soon as practicable after receiving the certificate, the authorised person must give the AFP appointee a written notice informing the AFP appointee:
 - (a) of the results of the test; and
 - (b) that:
 - (i) the appointee may collect the unanalysed sample, and the result of the analysis from the analysed sample, from the authorised laboratory within 56 days of the notice being given; and

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- (ii) the appointee may have the unanalysed sample independently tested by another authorised laboratory in accordance with section 46; and
- (iii) the unanalysed sample may be destroyed if it is not collected within 6 months of the notice being given.

46 Disputed results

- (1) If the results of an analysis of a body sample other than urine are disputed by the AFP appointee who provided the sample:
 - (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, retesting need only detect the presence of alcohol or a prohibited drug.

Subdivision D—Prohibited drug tests using urine samples

47 Procedures to be followed

- (1) This section is made for the purposes of subparagraph 40P(1)(h)(ii) of the Act in relation to the conduct of a prohibited drug test, using a urine sample, under section 40M or 40N of the Act.
- (2) A urine sample provided for the purposes of the prohibited drug test must be provided, and analysed, 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*, published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as existing from time to time.

48 Approval by Commissioner of training courses

For the purposes of paragraphs 40P(1)(b) and (h) of the Act, the Commissioner may, in writing, approve a training course in supervising the provision of urine samples.

Division 8—Miscellaneous

49 Certificates

For the purposes of paragraphs 40P(1)(b), (e) and (i) of the Act, a certificate issued under subsection 31(4) or 37(5) or section 45 is prima facie evidence of the matters stated in the certificate.

50 Awards for bravery, other conspicuous conduct and diligent service

For the purposes of section 61 of the Act, an award mentioned in column 1 of an item of the table in clause 1 of Schedule 2 may be conferred on the basis of the criteria mentioned in column 2 of the item.

51 Voluntary retirement

- (1) Notice under subsection 31(1) of the Act of the retirement of an AFP employee must specify a day on which the retirement is to take effect.
- (2) The day specified in the notice must not:
 - (a) be earlier than 14 days after the day on which the notice is given (unless the Commissioner approves a shorter period); or
 - (b) be later than 4 months after the day on which the notice is given.

Part 3 Review of employment decisions

Division 1 Purpose of this Part

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Part 3—Review of employment decisions

Division 1—Purpose of this Part

52 Purposes of this Part

This Part is made for the purposes of paragraph 70(l) of the Act.

Division 2—Retirement due to physical or mental incapacity

53 Application for review

- (1) An AFP employee who has been retired because of physical or mental incapacity by the Commissioner of Police under subsection 32(1) of the Act may apply in writing to the Merit Protection Commissioner for review of the decision.
- (2) The application must:
 - (a) be made through the Commissioner of Police within 28 days after the employee is notified of the decision; and
 - (b) state briefly why the review is sought.
- (3) The application does not operate to stay the decision.

54 Notification of review

- (1) Within 14 days after the day the Commissioner of Police receives an application from an AFP employee, the Commissioner must give to the Merit Protection Commissioner:
 - (a) the application; and
 - (b) any documents relating to the making of the decision under subsection 32(1) of the Act.
- (2) The Commissioner of Police must give to the AFP employee a copy of any documents given to the Merit Protection Commissioner under paragraph (1)(b).

55 Minimum requirements for conducting review

- (1) The conduct of a review by the Merit Protection Commissioner must meet the following minimum requirements:
 - (a) the review must be conducted with due regard to procedural fairness;
 - (b) the review must be conducted in private;
 - (c) the review must be finished as quickly, and with as little formality, as the proper consideration of the matter allows.
- (2) A person appearing before the Merit Protection Commissioner must do so without representation unless the Merit Protection Commissioner decides that, in all the circumstances, it would be reasonable to allow the person to be represented.

56 Requirement to provide information or documents

- (1) The Merit Protection Commissioner may, by written notice, require the Commissioner of Police or applicant to give to the Merit Protection Commissioner specified information or documents relevant to the review.
- (2) The Commissioner of Police or applicant must give the information or documents in the way, and at or within the time, stated in the notice.

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57 Conduct of review

The Merit Protection Commissioner may:

- (a) review the decision; and
- (b) make a recommendation to the Commissioner of Police, in writing, about the review; and
- (c) give the Commissioner of Police, in writing, the reasons for the recommendation; and
- (d) give a copy of the recommendation and reasons to the applicant.

58 Exclusion of information by Merit Protection Commissioner

- (1) The Merit Protection Commissioner may exclude information from a copy of the recommendation and reasons that is to be given to an applicant, in response to an application for review, if:
 - (a) the recommendation and reasons refer to information of a medical or psychiatric nature; and
 - (b) the Merit Protection Commissioner thinks that the information may be prejudicial to the physical or mental health or well-being of the applicant.
- (2) However, if information is excluded, the Merit Protection Commissioner must tell the applicant in writing:
 - (a) that information has been excluded from the copy of the recommendation and reasons; and
 - (b) if the applicant nominates a medical practitioner for the purposes of this paragraph, that the information will be given to the medical practitioner.
- (3) The Merit Protection Commissioner must give the information to the nominated medical practitioner as soon as practicable.

59 Action by Commissioner of Police

- (1) As soon as practicable after receiving a recommendation from the Merit Protection Commissioner under paragraph 57(b), the Commissioner of Police must:
 - (a) consider that recommendation; and
 - (b) confirm or revoke the original decision made by the Commissioner of Police under subsection 32(1) of the Act.
- (2) The Commissioner of Police must notify the applicant and the Merit Protection Commissioner, in writing, of the decision of the Commissioner of Police, and the reasons for it.

60 Exclusion of information by Commissioner of Police

- (1) The Commissioner of Police may exclude information from the copy of the decision, and reasons for it, given to an applicant under subsection 59(2) if:
 - (a) the decision and the reasons refer to information of a medical or psychiatric nature; and
 - (b) the Commissioner thinks that the information may be prejudicial to the physical or mental health or well-being of the applicant.

- (2) However, if information is excluded, the Commissioner must inform the applicant in writing:
 - (a) that information has been excluded from the copy of the decision and reasons; and
 - (b) if the applicant nominates a medical practitioner for the purposes of this paragraph—that the information will be given to the medical practitioner.
- (3) The Commissioner must give the information to the nominated medical practitioner as soon as practicable.

Division 3—Process for review of AFP employment decisions

61 Process for review must exist

- (1) The Commissioner must ensure that a process for reviewing AFP employment decisions exists at all times.
- (2) The process must be at least as favourable to AFP employees and special members as the process set out in the Australian Federal Police Certified Agreement 1999–2000, as at 1 July 2000.

Part 4—AFP property matters

Division 1—Return of property

62 Return of property etc.

- (1) A person who ceases to be a Commissioner, Deputy Commissioner, an AFP employee, a special member or a special protective service officer must return returnable property in the person's possession to the Commissioner as soon as it is reasonably practicable to do so.
- (2) For the purposes of paragraphs 70(a) and (b) of the Act, a person commits an offence if:
 - (a) the person ceases to be a Commissioner, Deputy Commissioner, an AFP employee, a special member or a special protective service officer; and
 - (b) the person has property in the person's possession; and
 - (c) the property is returnable property; and
 - (d) the person does not return the returnable property, as soon as it is reasonably practicable to do so, to the Commissioner.

Penalty: 5 penalty units.

- (3) **Returnable property** is property that:
 - (a) was:
 - (i) supplied to the person for the purposes of the person's service in the AFP; or
 - (ii) in the person's custody because of that service; and
 - (b) is not prescribed property.
- (4) The person's **prescribed property** is property that the Commissioner has determined, in writing, is not required to be returned to the Commissioner by:
 - (a) the person; or
 - (b) a class of persons that includes the person; or
 - (c) all persons to whom subsection (1) applies;because its return is not necessary for the good governance of the AFP.

63 Application for warrant

- (1) The Commissioner, or a member of the Australian Federal Police who is authorised for the purposes of this section, (the **officer**) may apply to a Magistrate for a warrant authorising the officer to enter and search premises or a place for the purpose of ascertaining whether returnable property is to be found on those premises or at that place.
- (2) On receiving the application, the Magistrate may grant the warrant if the Magistrate is satisfied by information on oath or affirmation that there are reasonable grounds for believing that:
 - (a) returnable property referred to in the information is to be found on the premises or at the place; and

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- (b) the issue of a warrant is reasonably required for the recovery of that property.
- (3) The warrant authorises the officer to do the following for the purpose referred to in subsection (1):
 - (a) to enter and search the premises or place:
 - (i) during the hours of the day or night specified by the warrant; or
 - (ii) if the warrant so specifies—at any time;
 - (b) to use any assistance the officer thinks appropriate, and if necessary, to use reasonable force against persons or things;
 - (c) to seize any returnable property that the officer may find in the premises or place.

64 Announcement before entry under warrant

- (1) Before entering premises under a warrant, the officer executing the warrant must:
 - (a) announce that the officer is authorised to enter the premises; and
 - (b) show the officer's identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
 - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, the officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required:
 - (a) to ensure the safety of a person; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
 - (a) the officer does not comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the officer must, as soon as practicable after entering the premises, show the officer's identity card to the occupier or other person.

65 Possession of warrant

The officer executing a warrant must be in possession of the warrant issued by the Magistrate under section 63, or a copy of the warrant as so issued.

66 Details of warrant etc. to be given to occupier

- (1) The officer executing a warrant in relation to premises must comply with subsection (2) if the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The officer must, as soon as practicable:
 - (a) make a copy of the warrant available to the occupier or other person (which need not include the signature of the Magistrate who issued it); and

- (b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under sections 67 and 68.

67 Right to observe execution of warrant

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

68 Responsibility to provide facilities and assistance

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) the officer executing the warrant; and
 - (b) any person assisting the officer;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 5 penalty units.

69 Powers of Magistrates

Powers conferred personally

- (1) A power conferred on a Magistrate by this Division is conferred on the Magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The Magistrate need not accept the power conferred.

Protection and immunity

- (3) A Magistrate exercising a power conferred by this Division has the same protection and immunity as if the Magistrate were exercising the power:
 - (a) as the court of which the Magistrate is a member; or
 - (b) as a member of the court of which the Magistrate is a member.

Division 2—Disposal and retention of unclaimed property

70 Purpose of this Division

This Division is made for the purposes of paragraph 70(aa) of the Act.

71 Return of claimable property that has been found

(1) This section applies to claimable property:

- (a) that has been found; and
- (b) that is not held for evidentiary use in legal proceedings.

Note 1: For the return or disposal of property held for evidentiary use in legal proceedings, see section 73.

Note 2: See also section 76 if the property represents a danger to public health and safety.

Who may claim property

(2) The claimable property may, before it is presented for sale or is otherwise disposed of, be claimed by:

- (a) the person entitled to lawful possession of the property; or
- (b) a person who found the property, but only if the person who is entitled to lawful possession has not claimed it within 3 months after the day it came into the custody of the AFP.

Releasing property

(3) Before releasing the property to a person claiming entitlement (or to the person's authorised agent), the Commissioner must be satisfied that the person has a valid entitlement to the lawful possession of the property.

Competing claims

(4) If there are competing claims under subsection (2):

- (a) a person (including a person on behalf of the AFP) may apply to a court for an order that the person is entitled to possession of the property; and
- (b) on receiving such an application, the court may make such an order; and
- (c) the AFP must respond to any claim that is supported by such an order.

(5) No person has any right of action against the AFP in relation to an interest in property that is released to a person in accordance with this section.

Giving notice of refusal to release property

(6) If:

- (a) the Commissioner does not release claimable property to a person claiming entitlement to the property (or to the person's authorised agent) because the Commissioner is:
 - (i) satisfied of a matter mentioned in subparagraph (b)(ii) of the definition of *claimable property* in section 5; or

- (ii) not satisfied of a matter mentioned in subsection (3) of this section;
and
 - (b) the property is not to be dealt with under section 76 (which deals with the immediate disposal of property);
- the Commissioner must notify the person, in writing, of the decision not to release the property.

Note: For property that will be dealt with under section 76, see the notice requirements under subsections 76(2) to (4).

- (7) A notice under subsection (6) must include:
 - (a) the reasons for the decision not to release the property; and
 - (b) information about how the property will be dealt with; and
 - (c) information about how the person can claim compensation in respect of the property.

72 Disposal and retention of claimable property that has been found

The Commissioner may dispose of claimable property covered by section 71, by any appropriate means (including by sale or gift), or retain such property for the purposes of law enforcement, if:

- (a) the Commissioner is satisfied that reasonable action has been taken to tell the person entitled to lawful possession of the property that the AFP has custody of the property and intends to dispose of it if it is not claimed under section 71; and
- (b) the property:
 - (i) has not been claimed under section 71 by the person entitled to lawful possession, or by the finder within 4 months after the day it came into the custody of the AFP; or
 - (ii) has been claimed under section 71 by a person as mentioned in subparagraph (i) of this paragraph but the Commissioner has decided under subsection 71(3) not to return the property to that person.

Note 1: The Commission must publish a notice of a proposed sale under this section (see section 75).

Note 2: The person entitled to lawful possession of the property immediately before the sale of the property may later claim the proceeds of the sale from the Commonwealth (see section 78).

73 Return or disposal of claimable property held for evidentiary use

- (1) This section applies to claimable property that has been held for evidentiary use in legal proceedings.

Note: See section 76 if the property represents a danger to public health and safety.

- (2) 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 lawful possession when the reason for its detention has no further effect.

Note: See, for example, the *Proceeds of Crime Act 2002*.

Section 74

Competing claims

- (3) If there are competing claims under subsection (2):
- (a) a person (including a person on behalf of the AFP) may apply to a court of a State or Territory that has jurisdiction in relation to the matter for an order that the person is entitled to possession of the property; and
 - (b) on receiving such an application, the court may make such an order; and
 - (c) the AFP must respond to any claim that is supported by such a court order.

When person entitled to property cannot be located or does not want the property

- (4) However, if the Commissioner is reasonably satisfied that the person entitled to lawful possession of the property cannot be located or does not want the property, the Commissioner may, as appropriate, dispose of the property by any appropriate means (including by sale or gift) or retain the property for the purposes of law enforcement.

Note 1: The Commissioner must publish a notice of a proposed sale under this section (see section 75).

Note 2: The person entitled to lawful possession of the property immediately before the sale of the property may later claim the proceeds of the sale from the Commonwealth (see section 78).

74 Disposal of other property that has been found

- (1) The Commissioner may direct that:
- (a) live animals; or
 - (b) perishable goods; or
 - (c) property that is difficult to store;
- that has been found be disposed of by any appropriate means (including by sale or gift).

Note 1: The Commissioner must publish a notice of a proposed sale under this section (see section 75).

Note 2: The person entitled to lawful possession of the property immediately before the sale of the property may later claim the proceeds of the sale from the Commonwealth (see section 78).

- (2) The Commissioner may direct that:
- (a) illicit materials or illicit-related materials; or
 - (b) goods that are dangerous, noxious or illegal to possess;
- be disposed of by any appropriate means (except by sale or gift).

75 Notice, and proceeds, of sale of property

- (1) The Commissioner must publish a notice of any proposed sale of unclaimed property under section 72, 73 or 74:
- (a) at least 7 days before the expected date of the sale; and
 - (b) either:
 - (i) in a daily newspaper circulating generally in the State or Territory in which the sale is to be held; or

- (ii) on a website or a social media service (within the meaning of the *Enhancing Online Safety Act 2015*).
- (2) No person who has an interest in property before the disposal of the property has a right of action against the Commonwealth in relation to the interest after the property is disposed of under section 72, 73 or 74.

76 Immediate disposal of property on the grounds of public health and safety or offensive nature

- (1) Despite sections 71 and 73, the Commissioner may direct immediate disposal (except by sale or gift) of property (whether or not claimable property) that the Commissioner is reasonably satisfied is property that:
- (a) represents a danger to public health and safety; or
 - (b) is offensive in nature.

Giving notice of disposal of property

- (2) Subject to subsection (4), as soon as practicable, and before the end of 7 days after disposing of the property, the Commissioner must give or publish a notice in writing that:
- (a) identifies the property; and
 - (b) states the manner by which the goods came into the possession of the AFP including, if the property was seized, the reason for the seizure; and
 - (c) states that the property has been dealt with under subsection (1) and specify the manner in which the property has been dealt with and the reasons for doing so; and
 - (d) sets out the terms of section 77.
- (3) The notice must be served:
- (a) personally, or by post, on the owner of the property; or
 - (b) if the owner cannot be identified after reasonable inquiry and the property was seized—on the person in whose possession or under whose control the property was when it was seized; or
 - (c) if a person mentioned in paragraph (a) or (b) cannot be identified with reasonable inquiry—by publishing a copy of the notice on the AFP website or in a newspaper circulating in the location:
 - (i) if the property was not seized—in which the property came into the possession of the AFP; or
 - (ii) if the property was seized—in which the property was seized.

When a notice is not required

- (4) A notice is not required to be given or published if the Commissioner is reasonably satisfied that the giving or publishing of the notice may prejudice an ongoing investigation or legal proceedings under a law of the Commonwealth, a State or a Territory.

Section 77

No right of action

- (5) No person who has an interest in property before the disposal of the property has a right of action against the Commonwealth in relation to the interest after the property is disposed of under this section.

77 Return of market value of property

- (1) A court of a State or Territory that has jurisdiction in relation to claimable property may order the Commonwealth to pay a person an amount equal to the market value of the claimable property if the court is satisfied that:
- (a) the person is the owner of the property; and
 - (b) the property has been disposed of purportedly under section 72, 73, 74 or 76; and
 - (c) the circumstances for disposing of the property do not exist.
- (2) The market value that the court may order is the market value of the property at the time the property was disposed of.

78 Person entitled to lawful possession may obtain sale proceeds

- (1) This section applies if:
- (a) property has been disposed of by sale under section 72, 73 or 74; and
 - (b) either:
 - (i) the person who was entitled to lawful possession of the property immediately before the sale; or
 - (ii) the person who found the property; makes a claim on the Commonwealth in respect of the property.
- (2) The Commonwealth must pay the amount in subsection (3) to:
- (a) if, at the time the amount is to be paid, the person who was entitled to lawful possession of the property has made a claim—that person; and
 - (b) otherwise—the person who found the property.
- (3) The amount is equal to:
- (a) the amount for which the property was sold; less
 - (b) the total of any amounts reasonably spent by the Commonwealth for the storage, maintenance or disposal of the property.
- (4) Only one amount may be paid under this section in relation to the property.

Part 5—Miscellaneous

79 Delegations

The Commissioner may, in writing, delegate any of the Commissioner's powers, functions and duties under this instrument to:

- (a) a Deputy Commissioner; or
- (b) an AFP employee; or
- (c) a special member.

80 Police services rendered to the public or to an authority of the Commonwealth

- (1) This section is made for the purposes of paragraphs 70(c) and (d) of the Act in relation to a police service that is rendered by the AFP to:
 - (a) an authority of the Commonwealth, if rendering the service is a function of the AFP; or
 - (b) an individual at the request of, or under an agreement with, the individual; or
 - (c) a body corporate at the request of, or under an agreement with, the body corporate; or
 - (d) any other organisation (other than an authority of the Commonwealth) at the request of, or under an agreement with, the organisation.

Note: *Authority of the Commonwealth* is defined in section 4 of the Act.

- (2) Subject to subsections (3) and 81(2), the fee that is set out in column 2 of an item of the table in clause 1 of Schedule 3 may be charged for the police service that is set out in column 1 of that item.
- (3) For items 1, 2 and 4 of that table, the fee is the sum of:
 - (a) the amount mentioned in the item; and
 - (b) any amount payable by the AFP in the course of providing the service, rounded up to the nearest dollar.
- (4) To avoid doubt, each authority of the Commonwealth is prescribed for the purposes of paragraph 70(d) of the Act.

81 Waiver and exemption of fees

Waiver of fees

- (1) The Commissioner may waive payment of the whole or part of a fee payable under section 80 if:
 - (a) payment of the fee would cause financial hardship; or
 - (b) for any other reason, the Commissioner considers it appropriate to do so.

Section 81

Exemption of fees

- (2) A fee is not payable under section 80 if it relates to an activity conducted for a charitable purpose.

Part 6—Transitional, savings and application provisions

Division 1—Australian Federal Police Regulations 2018

82 Definitions

In this Division:

old regulations means the *Australian Federal Police Regulations 1979*.

83 Things done under old regulations

- (1) If:
 - (a) a thing was done for a particular purpose under the old regulations as in force immediately before those regulations were repealed; and
 - (b) the thing could be done for that particular purpose under this instrument; the thing has effect for the purposes of this instrument as if it had been done for that particular purpose under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, approval or other instrument being given or made.

84 Conduct, event, circumstances occurring before commencement

- (1) To avoid doubt, a function or duty may be performed, or a power exercised, under this instrument in relation to conduct engaged in, an event that occurred, or a circumstance that arose, before this section commences.

Note: For example:

- (a) deductions may be made under Division 5 of Part 2 in relation to judgment debts arising before commencement; and
 - (b) property may be dealt with under Division 2 of Part 4 if the property came into the possession of the AFP before commencement.
- (2) This section does not limit section 83 of this instrument or section 7 of the *Acts Interpretation Act 1901* (as that Act applies in relation to this instrument because of paragraph 13(1)(a) of the *Legislation Act 2003*).

85 Saving forms

Despite the repeal of Forms 4, 5 and 6 in Schedule 1 to the *Australian Federal Police Regulations 1979*, those forms continue to apply after this section commences for the purposes of Division 2 of Part II of the Act as it continues to apply under item 3 of Schedule 1 to the *Surveillance Devices Act 2004*.

Schedule 1—Forms for undertakings, oaths and affirmations relating to the performance of duties

Note: See sections 13 and 14.

Form 1—Undertaking

Australian Federal Police Act 1979

UNDERTAKING RELATING TO PERFORMANCE OF DUTIES

I, _____, undertake that I will, in the performance of my duties as a [**member/*special member/*protective service officer/*special protective service officer*] of the Australian Federal Police, comply with the provisions of the *Australian Federal Police Act 1979*, the regulations made under that Act, the Commissioner's Orders issued under section 38 of that Act and any lawful direction, instruction or order, whether written or oral, under section 40 of that Act.

* Delete if not applicable

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

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 the person's religion*]!

* Delete if not applicable

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

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 4—Oath for protective service officer or special protective service officer

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 the person's religion*]!

* Delete if not applicable

Form 5—Affirmation for protective service officer or special protective service officer

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

Schedule 2—Awards and criteria

Note: See section 50.

1 Awards and criteria

The following table sets out prescribed awards and prescribed criteria.

Prescribed awards and prescribed criteria		
Item	Column 1 Award	Column 2 Criteria
1	Commissioner's Commendation for Bravery	The person has, in the performance of the person's duties, demonstrated an act of bravery and placed the person at substantial risk of personal injury
2	Commissioner's Commendation for Conspicuous Conduct	The person has, in the performance of the person's 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 the person's 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 the person's 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: (a) pursuing the AFP's core business outcomes to the highest level; and (b) encompassing the AFP's corporate values to the highest level
10	Commissioner's Medal for Innovation	Outstanding innovation by a person or an identified group of persons in: (a) pursuing the AFP's core business outcomes to the highest level; and (b) encompassing the AFP's corporate values to the highest level

Schedule 2 Awards and criteria

Clause 1

Prescribed awards and prescribed criteria

Item	Column 1 Award	Column 2 Criteria
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
13	Australian Protective Service Medal	The person has given 10 cumulative years of diligent service to the Australian Protective Service during the period beginning on 20 October 1984 and ending on 30 June 2004

Schedule 3—Fees

Note: See section 80.

1 Fees

The following table sets out police services that may be rendered and fees for those services.

Fees for police services		
Item	Column 1 Matter	Column 2 Fee
1	Searching AFP records for information about convictions for offences committed by a person and making a report of the search result	\$21
2	Taking a set of fingerprints, searching the fingerprints against AFP records and making a report of the search result	\$78
3	Taking and giving a set of fingerprints to the applicant	\$26
4	Searching a set of fingerprints given by an applicant against AFP records and making a report of the search result	\$38
5	Making and giving a copy of a photograph	\$19
6	Making and giving a copy of a road accident report (where the accident caused injury or death)	\$26
7	Making and giving a copy of a road accident report (where the accident did not cause injury or death)	\$15
8	Making and giving a copy of a road accident survey plan	\$38
9	Searching AFP records for incidents reported by a person, and making a report of the search result, about: (a) alleged harassment of the person; or (b) alleged violence, or threats of violence, directed against that person	\$20
10	Making and giving a copy of one of the following reports: (a) fire report; (b) death report; (c) industrial accident report; (d) report of a mechanical check of a motor vehicle in AFP custody	\$38
11	Making and giving a copy of a lost property report	\$19
12	Attending, for the second and each subsequent time in a month, premises in response to a burglar alarm (if no evidence of intrusion is found)	\$152
13	Making and giving a copy of an audio recording	\$39
14	Making and giving a copy of a video recording	\$41
15	Making and giving a copy of an incident report	\$37
16	Making and giving a copy of a Criminal Offence Report	\$37

Schedule 3 Fees

Clause 1

Fees for police services

Item	Column 1 Matter	Column 2 Fee
17	Making and giving a copy of a statement	\$37
18	AFP appointee attending to keep order at a sporting or entertainment event	Cost to AFP for use of AFP appointee's time
19	AFP appointee attending an interview relating to court proceedings	Cost to AFP for use of AFP appointee's time
20	Training or lecturing, by an AFP appointee, other than training or lecturing for community purposes	Cost to AFP for use of AFP appointee's time
21	AFP appointee searching AFP records to present or produce evidence to a court	Cost to AFP for use of AFP appointee's time
22	AFP appointee attending court proceedings	Cost to AFP for use of AFP appointee's time— minimum period 4 hours
23	AFP appointee giving a police escort	Cost to AFP for use of AFP appointee's time
24	AFP appointee searching AFP records and making a report of the search result	Cost to AFP for use of AFP appointee's time (in addition to any other item of this table that applies in relation to the search)
25	Arranging or conducting a medical examination and preparing a report	\$366
26	AFP appointee compiling a medical report	Cost to AFP for use of AFP appointee's time
27	Making and giving a copy of an existing medical report	\$19
28	AFP appointee rendering a service not mentioned in this Schedule	Cost to AFP for use of AFP appointee's time

Note: *Cost to AFP for use of AFP appointee's time* is defined in section 5.

Schedule 4—Repeals

Australian Federal Police Regulations 1979

1 The whole of the instrument

Repeal the instrument.