



Complaints (Australian Federal Police) Regulations

Statutory Rules 1982 No. 91 as amended

made under the

Complaints (Australian Federal Police) Act 1981

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taking into account amendments up to SR 1993 No. 307

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Contents

1	Citation [see Note 1]	2
2	Interpretation	2
3	Prescribed regulations	2
4	Prescribed particulars for the purposes of section 18 of the Act	3
5	Prescribed particulars for the purposes of subsection 38 (2) of the Act	6
6	Prescribed particulars for the purposes of section 43 of the Act	6
7	Costs	7
8	Fees and allowances payable to witnesses	8
9	Disciplinary proceedings — standard of proof	8
Schedule	Witnesses fees and allowances	9
Notes		10

1 Citation [see Note 1]

These Regulations may be cited as the Complaints (Australian Federal Police) Regulations.

2 Interpretation

In these Regulations, unless the contrary intention appears, *the Act* means the *Complaints (Australian Federal Police) Act 1981*.

3 Prescribed regulations

For the purposes of subsection 3 (4) of the Act, the Australian Federal Police (Discipline) Regulations made under the *Australian Federal Police Act 1979*, as amended and in force from time to time, other than Part 4 of those Regulations, are declared to be the prescribed regulations.

4 Prescribed particulars for the purposes of section 18 of the Act

- (1) For the purposes of subsection 18 (1) of the Act, the following particulars are prescribed with respect to each complaint or other matter that is referred to the Investigation Division for investigation:
 - (a) the date on which, and place at which, the complaint or matter is received by the Investigation Division;
 - (b) in the case of a complaint:
 - (i) the date on which, and place at which, the complaint was made;
 - (ii) where known — the name and address of the complainant;
 - (iii) where known — the name, rank and number of the member the subject of the complaint; and
 - (iv) in the case of a complaint referred under section 6 of the Act — the name, rank and number of the member to whom the complaint was made, the date on which the Ombudsman was notified of the complaint and the date on which the Ombudsman was furnished with particulars of the complaint;
 - (c) in the case of a complaint referred under paragraph 23 (1) (b) or subsection 25 (5) of the Act — the date on which the referral of the complaint was received by the Commissioner from the Ombudsman;
 - (d) in the case of a matter referred under subsection 71 (3) of the Act — the date on which and place at which the matter was referred to the Commissioner by the Disciplinary Tribunal and the date on which the Commissioner's report was furnished to the Tribunal;
 - (e) the name, rank and number of any member or, in the case of a complaint or matter investigated by a person who is not a member, the name and address of the person, who investigated the complaint or matter;
 - (f) a brief description of the substance of the complaint or matter;

- (g) whether any charge has been laid as a result of the investigation of the complaint or matter, the nature of the charge and the outcome of the charge; and
 - (h) the file or reference number assigned to the complaint or matter by the Australian Federal Police.
- (2) For the purposes of subsection 18 (2) of the Act:
 - (a) the following particulars are prescribed with respect to complaints and other matters referred during a year to the Investigation Division for investigation:
 - (i) the number of complaints and matters referred;
 - (ii) of those matters, the number referred under subsection 71 (3) of the Act;
 - (iii) the number of complaints and matters that were found, on investigation, to be substantiated;
 - (iv) the number of complaints and matters that were found, on investigation, to be unsubstantiated;
 - (v) the number of complaints and matters that were found, on investigation, to be incapable of being either substantiated or unsubstantiated;
 - (vi) the number of complaints in respect of which the Commissioner has attempted, under section 19 of the Act, to reconcile the complainant and the member concerned;
 - (vii) the number of complaints in respect of which the Commissioner is satisfied that a reconciliation under section 19 of the Act has been effected;
 - (viii) the number of complaints and matters that were withdrawn; and
 - (ix) the number of complaints and matters that were not investigated, not being complaints and matters referred to in subparagraph (viii);
 - (b) the following particulars of the action taken by the Investigation Division during a year in respect of complaints and other matters referred to the Investigation Division for investigation are prescribed:
 - (i) the number of complaints and matters investigated by the Investigation Division; and

- (ii) the number of complaints concerning which the Commissioner informed the Ombudsman, or concerning which the Commissioner was informed by the Ombudsman, under subsection 46 (1) of the Act;
- (c) the following particulars of the action taken by the Commissioner during a year in respect of reports received by him of the results of investigations by the Investigation Division are prescribed:
 - (i) the number of reports received by the Commissioner;
 - (ii) the number of members charged with a breach of discipline as the result of a report;
 - (iii) the total number of disciplinary charges instituted;
 - (iv) the number of members charged with an offence as the result of a report; and
 - (v) the total number of criminal charges instituted;
- (d) the following particulars of the action taken by the Commissioner during a year in respect of reports received by him from the Ombudsman in respect of investigations by the Ombudsman are prescribed:
 - (i) the number of reports received by the Commissioner;
 - (ii) the number of members charged with a breach of discipline as the result of a report;
 - (iii) the total number of disciplinary charges instituted;
 - (iv) the number of members charged with an offence as the result of a report; and
 - (v) the total number of criminal charges instituted; and
- (e) the following particulars of the action taken by the Commissioner during a year in respect of proceedings remitted to him by the Disciplinary Tribunal are prescribed, that is to say, the number of proceedings remitted to the Commissioner.

5 Prescribed particulars for the purposes of subsection 38 (2) of the Act

For the purposes of subsection 38 (2) of the Act, the following particulars with respect to complaints that were made to the Ombudsman, or made to members and notified to the Ombudsman, under the Act during a year are prescribed:

- (a) the number of complaints made to the Ombudsman;
- (b) the number of complaints made to members and notified to the Ombudsman;
- (c) of the complaints made to the Ombudsman:
 - (i) the number rejected by the Ombudsman as not being within the jurisdiction conferred on him under the Act; and
 - (ii) the number that the Ombudsman has determined under section 24 of the Act should not be investigated, or investigated further, as the case requires;
- (d) the number of complaints that have been withdrawn or that are regarded as having lapsed;
- (e) the number of complaints in respect of which the Ombudsman has attempted, under section 42 of the Act, to reconcile the complainant and the member concerned;
- (f) the number of complaints in respect of which the Ombudsman is satisfied that a reconciliation under section 42 of the Act has been effected; and
- (g) the number of complaints that have been investigated by the Ombudsman and in respect of which the investigation has been completed.

6 Prescribed particulars for the purposes of section 43 of the Act

For the purposes of section 43 of the Act:

- (a) the following particulars are prescribed of, or relating to, complaints made to the Ombudsman under Part III of the Act and complaints that are to be treated as having been so made:

- (i) where known — the name and address of the complainant;
 - (ii) where known — the name, rank and number of the member in respect of whom the complaint is made;
 - (iii) whether the complaint was made to the Ombudsman under Part III of the Act or whether the complaint is one that is to be treated as having been so made;
 - (iv) the date on which, and time and place at which, the complaint was made; and
 - (v) the date on which the Ombudsman's investigation was completed; and
- (b) the following particulars are prescribed of, or relating to, complaints made to members that are notified to the Ombudsman under section 6 of the Act:
 - (i) the name and address of the complainant;
 - (ii) the name, rank and number of the member in respect of whom the complaint is made;
 - (iii) the date on which the notification is received; and
 - (iv) the date on which the Commissioner's report of the results of the investigation was received.

7 Costs

- (1) Where the Disciplinary Tribunal:
 - (a) under section 67 of the Act, finds a member not guilty of a breach of discipline;
 - (b) under section 68 of the Act:
 - (i) on the hearing and determination of an appeal by the Attorney-General, affirms the penalty imposed on the member or sets aside the penalty and substitutes a less severe penalty; or
 - (ii) on the hearing and determination of an appeal by the member, sets aside the penalty imposed on the member and substitutes a less severe penalty;
 - (c) under section 69 of the Act, sets aside the finding of the Commissioner and:
 - (i) substitutes a finding that the member committed a less serious breach of discipline; or

- (ii) dismisses the proceeding; or
- (d) under section 69 of the Act, sets aside the penalty imposed on the member and substitutes a less severe penalty;
the Tribunal may order that the costs of the proceedings before it incurred by the member, or part of those costs, shall be paid by the Commonwealth.
- (1A) Where by leave of the Disciplinary Tribunal proceedings in respect of a charge required to be heard by the Disciplinary Tribunal under section 67 of the Act are withdrawn, the Disciplinary Tribunal may order that the costs of those proceedings incurred by the member, or part of those costs, shall be paid by the Commonwealth.
- (2) Where, in accordance with this regulation, the Disciplinary Tribunal orders the Commonwealth to pay costs incurred by a member, the Tribunal may, in the absence of agreement between the Commonwealth and that member as to the amount of costs to be so paid, assess the amount of those costs.

8 Fees and allowances payable to witnesses

A person summoned to appear as a witness before the Disciplinary Tribunal shall be paid by the Commonwealth such fees, and allowances for expenses, in respect of his attendance as the Tribunal determines in accordance with the scale in the Schedule.

9 Disciplinary proceedings — standard of proof

The standard of proof required in proceedings before the Disciplinary Tribunal is proof on the balance of probabilities.

Schedule Witnesses fees and allowances

(regulation 8)

1. A witness appearing before the Disciplinary Tribunal to give evidence because of his professional, scientific or other special skill or knowledge shall be paid a fee of an amount not less than the lower amount specified in the High Court Rules in relation to expenses of witnesses possessing such skill or knowledge and not more than the higher amount so specified.
2. A witness, other than a witness referred to in item 1, appearing before the Disciplinary Tribunal to give evidence shall be paid:
 - (a) in the case of a witness remunerated by wages, salary or fees — a fee of the amount specified, and as delimited, in the High Court Rules in relation to the expenses of witnesses so remunerated; or
 - (b) in any other case — a fee of the amount specified in the High Court Rules in relation to expenses of witnesses generally.
3. A witness appearing before the Disciplinary Tribunal to give expert evidence shall be paid, in addition to any other fee payable to him under item 1 or 2, a reasonable amount for qualifying to give that evidence.
4. A witness appearing before the Disciplinary Tribunal to give evidence shall be paid a reasonable amount:
 - (a) in respect of his conveyance to and from the place at which he so attends; and
 - (b) if he is required to be absent overnight from his usual place of residence — for meals and accommodation.

Table of Statutory Rules

Notes to the Complaints (Australian Federal Police) Regulations**Note 1**

The Complaints (Australian Federal Police) Regulations (in force under the *Complaints (Australian Federal Police) Act 1981*) as shown in this compilation comprise Statutory Rules 1982 No. 91 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1982 No. 91	30 Apr 1982	1 May 1982 (<i>see Gazette</i> 1982, No. S79)	
1985 No. 11	14 Feb 1985	14 Feb 1985	—
1985 No. 291	7 Nov 1985	7 Nov 1985	—
1992 No. 58	5 Mar 1985	5 Mar 1985	R. 3 [see Table A]
1992 No. 285	8 Sept 1992	8 Sept 1992	—
1993 No. 307	25 Nov 1993	25 Nov 1993	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 3	am. 1992 No. 285
R. 7	am. 1985 No. 11
R. 9	ad. 1985 No. 291
	rs. 1992 No. 58
	am. 1993 No. 307

Table A

Table A Application, saving or transitional provisions

Statutory Rules 1992 No. 58

3 Application

- 3.1 The amendment made by regulation 2 extends to proceedings commenced, or concerning a matter that arose, before the date of commencement of the Regulations.