

## **SUPPLEMENTARY EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Australian Federal Police Act 1979*

*Australian Federal Police Regulations 2018*

### **Purpose of supplementary explanatory statement**

This supplementary explanatory statement amends the initial explanatory statement (the explanatory statement) to the *Australian Federal Police Regulations 2018* (the Regulations), in response to issues raised by the Senate Standing Committee on Regulations and Ordinances' *Delegation legislation monitor 10 of 2018*.

### **Incorporation of documents**

*After the discussion of section 47 in Attachment A to the explanatory statement, include the paragraphs below:*

#### **Section 47 – Incorporation of documents**

The AS/NZS 4308:2008 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine* (the Standard) is a Standard of Standards Australia. The *Copyright Act 1968* (Cth) has the effect of making the Standard publicly available only in specific circumstances.

The Standard is freely and readily available to all persons directly affected by the law, being Australian Federal Police (AFP) appointees. All such persons have full access to the Standard via an online portal accessible on the AFP intranet. The Standard is also available to prospective or past AFP appointees, as well as persons generally interested in these laws, at the National Library of Australia. However, the Standard cannot be made public by the AFP in light of copyright restrictions.

Concerns arise when external materials incorporated into the law are not freely and readily available to persons to whom the law applies, or who may otherwise be interested in the law. However, any detriment caused by incorporated material not being freely and readily available to the public at large must be balanced against the benefit gained from utilising that incorporated material. Section 47 strikes an appropriate balance.

#### **Copyright restrictions**

The Standard is copyright protected by Standards Australia, which has provided SAI Global with exclusive distributor rights. The AFP's subscription agreement with SAI Global allows it to use and access the relevant standard for internal business purposes only. The AFP is not permitted to copy, distribute or allow access to any third party. As a result of the proprietary rights of Standards Australia, Standards Australia/Standards New Zealand and SAI Global, the AFP is not permitted to make the Standard freely and readily available to the general public.

### *The benefit of incorporating the relevant standard*

The ability for the Regulations to incorporate relevant aspects of standards published by Standards Australia or Standards Australia/Standards New Zealand is vital to ensuring the AFP applies best practice in its approach to alcohol and drug testing.

There is an expectation from employees that drug tests will be carried out pursuant to current industry standards. Standards Australia and Standards Australia/Standards New Zealand produce standards that are based on sound industrial, scientific and consumer experience and are regularly reviewed to ensure they keep pace with new technologies.

The Standard includes highly technical scientific procedures, particularly relating to testing methods, apparatus and calculations. These procedures are carried out by trained technicians from an independent company, on behalf of the AFP, in accordance with the Regulations.

Incorporating the Standard into the Regulations supports the integrity of test results and ensures there is no discrepancy between the procedures and testing methods used by the company contracted to conduct drug tests and the Standard referenced in the Regulations.

### **Disposal of property which is ‘offensive in nature’**

*After the discussion of section 76 in Attachment A to the explanatory statement, include the paragraphs below:*

#### Paragraph 76(1)(b) – When will property be ‘offensive in nature’?

The AFP Commissioner, in deciding whether he or she is reasonably satisfied that property is ‘offensive in nature’, may have regard to the following non-exclusive factors:

- the standards of morality, decency and propriety generally accepted by reasonable adults
- the literary, artistic or educational merit (if any) of the property, and
- the general character of the property (including whether it is of a medical, legal or scientific character).

Whether property is ‘offensive in nature’ is an assessment which is intended to be made on reasonable grounds, taking into account the nature of the property and the standards accepted by reasonable adults.

Property will not be ‘offensive in nature’ merely because the Commissioner personally finds this property offensive.