



**AUSTRALIAN FEDERAL  
POLICE COMMISSIONER'S  
FINANCIAL INSTRUCTIONS (CFIs)**

**July 2011**

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# The Australian Federal Police Commissioner's Financial Instructions

I, Michael Phelan, performing the duties of Commissioner of the Australian Federal Police, in the exercise of my powers under:

- Section 37(1) of the *Australian Federal Police Act 1979*;
- Section 69C of the *Australian Federal Police Act 1979*;
- Regulation 33 of the *Australian Federal Police Regulations*;
- Section 52(1) of the *Financial Management and Accountability Act 1997* (FMA Act);
- Section 53(1) of the *Financial Management and Accountability Act 1997* (FMA Act);
- Regulation 6 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations); and
- Regulation 26 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations).

issue Commissioner's Financial Instructions at Annexure A.

These instructions take effect from the date of publication to an AFP Appointee. Publication is satisfied by publication on the hub together with an electronic message to AFP Appointees announcing the existence of the Commissioner's Financial Instructions.



Michael Phelan APM  
Performing the duties of  
Commissioner

Dated: 30<sup>th</sup> June 2011

# LOG OF KEY CHANGES FROM PREVIOUS CFI

(last issued October 2010)

Item No.	<i>CFI reference/details of change</i>
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## AMENDMENTS TO ANNEXURE A – COMMISSIONER’S FINANCIAL INSTRUCTIONS

<b>1</b>	<b>Legislative amendments in relation to ‘proper use of public money’</b>
	<ul style="list-style-type: none"> <li>The definition of ‘proper use of public money’ now contains the word ‘economical’ i.e. when approving spending in accordance with FMA Regulation 9, a delegate is now satisfying themselves that the spend is ‘efficient, effective, economical and ethical use of public money’.</li> </ul>
<b>2</b>	<b>Changes to CFI 04 Approving Proposals to Spend Public Money</b>
	<ul style="list-style-type: none"> <li>Clarification of process required if unexpected shortfalls in funding arise. If the initial request is approved by the CFO and one of the DCs or the COO, funding can commence being spent, however, formalising this approval, via an endorsement from the Finance Committee needs to occur at the next available Finance Committee meeting.</li> </ul>
<b>3</b>	<b>Changes to CFI 06 Entering into Contracts</b>
	<ul style="list-style-type: none"> <li>Clarification in relation to contract dollar thresholds requiring legal advice ie anything greater than \$80,000 must go to legal.</li> </ul>
<b>4</b>	<b>Changes to CFI 09 Other non-routine spending</b>
	<ul style="list-style-type: none"> <li>CFI 9.2 - expanding the list of exempted gifting items to include promotional gift bags, hand outs at training and development sessions conducted by AFP staff.</li> <li>CFI 9.4 - hospitality and entertainment – adding a Commissioner’s Instruction to enforce the use of the AFP Official Hospitality form when approving expenditure.</li> </ul>
<b>5</b>	<b>Changes to CFI 22 Managing Risk and Accountability</b>
	<ul style="list-style-type: none"> <li>CFI 22.1 - the Commissioner and Senior Executive lead the AFP in accordance with the AFP’s Fraud Control and Anti-Corruption Plan 2009-11.</li> <li>CFI 22.2 - that an effective risk management culture, guidelines and framework are developed and maintained by Policy and Governance and must be complied with by National Managers.</li> </ul>

# COMMISSIONER'S FINANCIAL INSTRUCTIONS

## Preamble

These Instructions give effect to FMA legislation and the policy of the Australian Federal Police with respect to the exercise of financial responsibilities and delegations by Officials (including special members) and the application of Commissioner's Financial Instructions (CFIs). These Instructions are referred to as Commissioner's Financial Instructions (CFIs).

The CFIs are concerned solely with legislative and regulatory requirements relating to the financial management and accountability for public money within the AFP. s37(2)(b)

## Commissioner's Powers and Responsibilities

These Instructions:

- (a) Promulgate the Commissioner's Financial Instructions (CFIs) under Regulation 6 of FMA Regulations concerning the:
  - i. handling, spending of and accounting for public money by Officials;
  - ii. making commitments to spend public money;
  - iii. recovering amounts owing to the Commonwealth;
  - iv. using or disposing of public property; and
  - v. ensuring and promoting the proper use, accountability and management of public money, public property and other resources of the Commonwealth.
- (b) delegates certain powers, functions and duties regarding approval of the expenditure of public money and the exercise of other legislative and associated authorities.

Note: *Under section 69C of the AFP Act, s. 53 of the FMA Act and Regulation 26 of the FMA Regulations, the Commissioner may delegate his powers or functions.*

- (c) outlines relevant requirements of the broader FMA framework respect of the financial management of agencies subject to the FMA Act.

## Commissioner's Financial Instructions

Commissioner's Financial Instructions (CFIs) are set out in Annexure A to these Instructions. The Commissioner's powers, functions or duties under s. 69C of the AFP Act, s. 53 of the FMA Act and Regulation 26 of FMA Regulations are detailed in the CFIs.

All Officials, special members, or any other person providing services to, or on behalf of the AFP, including consultants, contractors and secondees, must comply with the CFIs.

## Delegation of the Commissioner's Powers

Under FMA Regulation 26, the Commissioner's powers or functions regarding the approval of proposals to spend public money and to exercise other powers under legislative or related authorities are delegated as provided in the Schedules at Annexure B of these Instructions.

Delegations approved by the Commissioner apply only when a Deputy Commissioner, AFP employee<sup>1</sup> or special member is performing the duties of, or occupying a position or role identified in those delegations. Any person other than a Deputy Commissioner, AFP employee<sup>1</sup> or special member filling a position or role for which a power has been delegated by the Commissioner may not exercise that power.

Delegates personally hold and possess the powers and responsibilities that have been delegated to them and are personally accountable for decisions and actions they take in respect of such delegated powers.

**Note<sup>1</sup>:** *'Employee' in this context includes non-ongoing employees directly employed by the AFP. Non-ongoing employees employed via a third party ie in a capacity similar to a contractor or consultant, are not entitled to exercise delegations relating to a position or role which they are filling unless they have been appointed by the Commissioner or his delegates under AFP Act s. 35(2).*

## Officials' responsibilities

The Executive shares responsibility with the Commissioner, who is accountable to the Minister and to Parliament for managing the AFP in a manner that promotes the efficient, effective, economical and ethical use of resources throughout the organisation.

Team Leaders and above are required to manage their areas of responsibilities in a manner that promotes efficient, effective, economical and ethical use of AFP resources.

Officials should ensure that their actions and decisions in managing the AFP's resources:

- are legal;
- will stand up to public scrutiny;
- are fair and ethical;
- are economical; and
- contribute to the achievement of the AFP's objectives, outcomes and functions.

The Executive, together with relevant Managers and Coordinators, should ensure that Officials exercising delegations and/or authorisations are adequately trained and sufficiently experienced to adequately carry out tasks associated with the exercising of their delegations and/or authorisations.

Managers at all levels throughout the organisation share the stewardship of AFP resources and are responsible for exercising leadership and good management in relation to those resources.

All Officials are required to uphold and apply the values of honesty, integrity and fairness and to maintain the professional standards set out in Commissioner's Order 2 – Professional Standards.

Managers at all levels throughout the organisation will be held accountable for their performance in providing Officials with the necessary authority, tools, skills and environment to assist them in achieving the efficient, effective, economical and ethical use of the AFP's resources.

Officials must neither split nor divide amounts for payment into multiple arrangements to circumvent financial limits detailed in any Instrument of Delegation or Authorisation, Commissioner's Instruction or Commissioner's Rule.

An Official must not purport to exercise a power if:

- the Instrument of Delegation or Authorisation conferring that power has been revoked; or
- the Official is no longer occupying a role/position to which the delegation applies; or
- the Official does not have any formal delegation.

### **Administered funds**

Administered funds are subject to the same financial regulatory requirements as normal Departmental appropriations.

# COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)

## ANNEXURE A

### Commissioner's Financial Instructions

# **COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)**

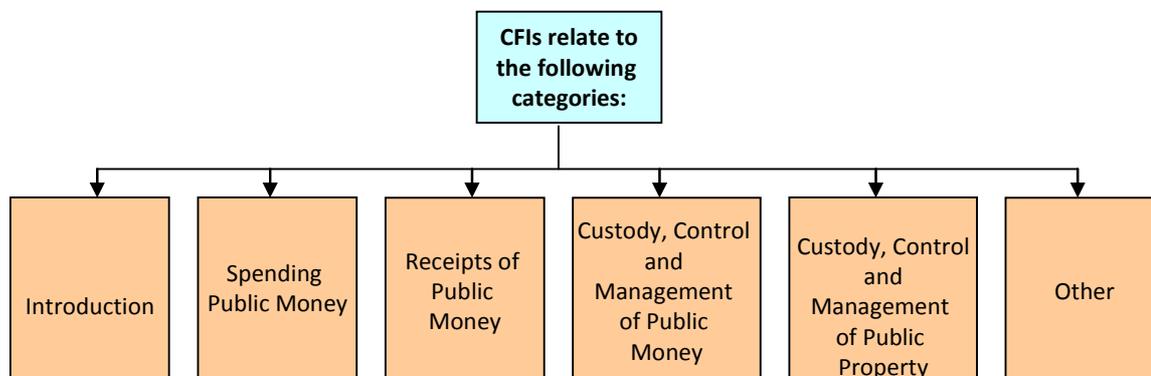
## **PART 1**

### **INTRODUCTION**

# CFI 01 - INTRODUCTION AND DELEGATIONS

## 01.1 Structure of CFIs

Commissioner's Financial Instructions (CFIs) are grouped within six categories as shown below:



Each category comprises several CFI chapters which are numbered consecutively across all categories. Each CFI chapter is structured as follows:

- Commissioner's Instructions – compliance with a Commissioner's Instruction is mandatory. Commissioner's instructions are clearly labelled as 'Commissioner's Instruction' and appear in **bold, normal** font.
- Commissioner's Rules – Commissioner's Rules operationalise Commissioner's Instructions. They may be expressed as 'must' (compulsory), 'should' (the rule is compulsory except in abnormal or exceptional circumstances) or 'recommended' (it is better practice to comply with the rule). Commissioner's rules appear in **bold, italic** font.
- Commentary, introduction, discussion, interpretation and examples – these terms are self explanatory. They are not compulsory and provide further context, background and explanatory material. They appear in normal blue font.

## 01.2 AFP National Guidelines

### *Commissioner's Rule*

- 01.2.1.1** *Where the CFI's mandate compliance with a National Guideline, the provisions and requirements of that Guideline are to be interpreted as if they appeared as a Commissioner's Rule.*

## 01.3 Delegations

### Commissioner's Instruction

- 01.3.1** Powers delegated by the Commissioner are listed at Schedule B to the CFIs.
- 01.3.2** Powers delegated by the Commissioner to an official may *not* be sub-delegated by that official to any other Official.

#### Commentary:

The Commissioner is directly provided with a number of powers, functions and responsibilities under the FMA Act which may be delegated by written Instrument to other Officials (FMA Act s. 53(1) and FMA Regulation 26(1)).

### **Commissioner's Rules**

- 01.3.1.1** *The Deputy Commissioners, Chief Operating Officer, Chief Police Officer for the ACT, Chief Financial Officer (CFO), Chief Information Officer and National Managers are to ensure that delegations and authorisations held within their areas of responsibility are adequate and appropriate to enable Officials to perform their duties effectively.*
- 01.3.1.2** *The CFO is responsible for the development and maintenance of a central register of Financial Instruments of Delegation, Authorisation and Revocation for the whole of the AFP.*
- 01.3.1.3** *Whenever a delegated or authorised Official exercises their authority the Official is to specify, on the document being signed, the authority under which that delegation or authority is exercised.*
- 01.3.1.4** *When an Official is acting in a position which has powers delegated by the Commissioner, that Official may exercise those powers only if there is a formal notification of their acting in that role or, in the case of a short term absence of the substantive delegate, if they receive the express authority from a Manager or member of the Executive. Officials formally acting in such positions must specify, on any document being signed, the acting authority under which their delegation or authority has been exercised.*
- 01.3.1.5** *Where a consultant or individual contractor has been appointed under Section 35(2) of the AFP Act, and that consultant or contractor is acting in a position or has an agreed AFP classification in that acting role, then the contractor or consultant is able to exercise any delegations applicable to that position or classification.*

#### **CFI 01 Source References:**

FMA Act sections: 44, 52, 53

FMA Regulations: 6, 26

# **COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)**

## **PART 2**

### **SPENDING PUBLIC MONEY**

## Overview of Part 2 – Spending Public Money

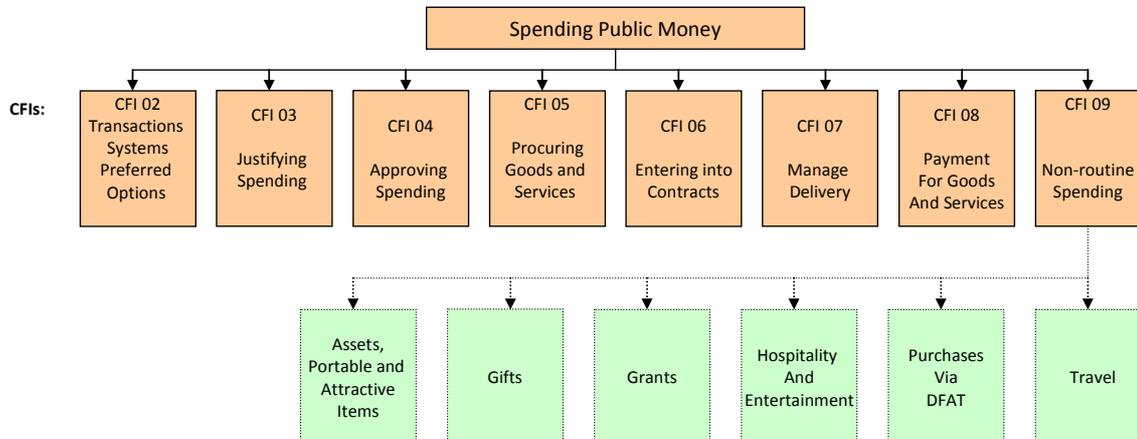
This Part of the CFIs encompasses the financial legislative requirements for the approval and acquittal of all forms of public money. 'Public money' means all monies appropriated by the Parliament and all other monies received by the AFP which are covered by some other form of appropriation. Officials are required to be aware of their delegated authority in relation to the expenditure of public money, including limits of authority and any other conditions imposed under Instruments of Delegation.

### Structure of Part 2

The CFIs relating to Spending Public Money have been separated to align to the distinct stages of a purchasing cycle. The objective for this form of presentation is to clearly set out the FMA framework obligations and the AFP's own requirements relating to each stage – in particular Sec. 44(1) of the FMA Act and Regulations 7 to 12 of the FMA Regulations.

In practice, the stages of a purchasing cycle and the compliance obligations are often inter-linked. This is the case for procurements (defined as the acquisition of goods and services) where the AFP's National Guideline on Procurement and Contracting require Officials to initially develop and document strategies that encompass all stages of a procurement.

The Commissioner's Financial Instructions contained in Part 2 are set out as follows:



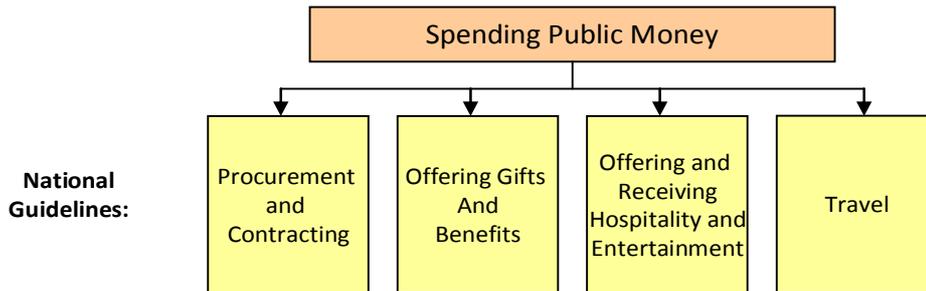
Firstly, CFI 02 describes and recommends the preferred options for processing the various types of spending transactions. CFIs 03 to 08 then set out the FMA framework requirements and the AFP Rules for each stage of the spending transaction cycle and will explain how these compliance obligations are achieved using each available system or process.

Public Money can be expended for various purposes including: procuring goods and services; providing financial support to other police forces; compensation; grants; gifts etc. The AFP has several transaction systems and processes available for processing these transactions.

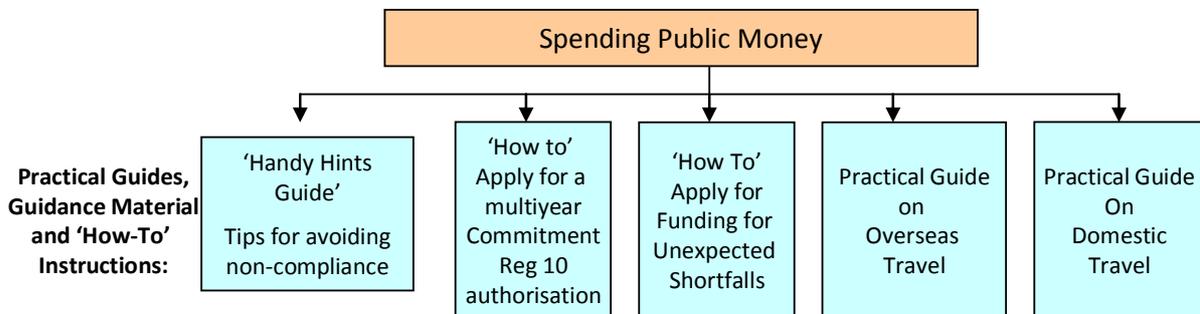
Officials need to be aware that the AFP has established better practice business rules for procuring goods and services through a National Guideline on Procurement and Contracting, the development of

procurement strategy templates and other guidance material. If Officials are considering the acquisition of goods and services they should initially source the AFP's better practice business rules via the National Guideline on Procurement and Contracting and the Procurement Strategy templates. This will ensure that the requirements of the FMA framework and CFIs 02 to 08 have been complied with in relation to procurements.

Relevant National Guidelines include:



Practical Guides, guidance material and 'How-To' Instructions include:



## CFI 02 - THE AFP'S TRANSACTION SYSTEMS – PREFERRED OPTIONS

### Introduction:

The AFP has several system options for the processing of purchase and payment transactions. The choice of option is largely dependant on the nature of the transaction. The systems available are:

- The automated on-line purchasing system:
- Purchasing via the corporate credit card and transaction processing via the Spendvision system; and
- Manual processing using paper based approval forms.

### Commissioner's Rules:

**02.1.1.1 Officials should use the automated on-line purchasing system for all regular and routine purchases (including asset purchases). Where a pre-existing contract exists, the system generated purchase orders should not be issued to suppliers. A copy of the signed contract should be issued to the supplier instead.**

### Guidance:

The on-line purchasing system should not be used where the spending proposal involves transactions that will need to be allocated across different portfolios.

Officials need to be aware that purchase orders created by the system represent contracts. Where a formal contract is required (non standard goods or services or high value or high risk goods or services), this needs to be negotiated and agreed and registered with the National Procurements and Contracting Team prior to using the on-line system. Both the contract and the system generated purchase order number is to be sent to the supplier.

**02.1.1.2 Officials should use the corporate credit card for all travel related expenditure and other minor expenditure (excluding assets) up to a value of \$5,000 (GST inclusive).**

**02.1.1.3 Officials must ensure that purchase orders are not raised for credit card purchases and that any invoices, paid by credit card, are sent directly to the credit card holder.**

**02.1.1.4 Officials who have increased transactional limits on their corporate credit cards approved by their National Managers may be exempt from the \$5,000 threshold limit. Seek advice from Finance Governance prior to purchase.**

**02.1.1.5 Where the nature of the proposed transaction is not suited for processing through the automated on-line purchasing system and does not fall within the transaction types and limits imposed for the corporate credit card, Officials will need to initiate transactions using paper based approval forms eg a Purchase Request Form.**

### Guidance:

The on-line purchasing system has been designed to process everyday routine purchases. The types of transactions ideally suited to the automated on-line purchasing system include all those transactions where the AFP requires a single supplier to deliver goods and services to the AFP and to subsequently remit an invoice to the AFP for payment.

The corporate credit card is ideally suited for 'point of sale' purchasing (where an invoice and receipt are issued simultaneously with the receipt of goods) or internet purchasing where payment is required at the point of purchase. Because the authorisation, purchase and payment of transactions occur simultaneously, there is no opportunity for separate approval processes at each stage. This means that the potential to install strong internal controls is limited and in order to mitigate this limitation, transacting through the corporate credit card is restricted to amounts less than \$5,000.

Where purchases have been transacted using the credit card, Officials must ensure that any invoices are sent directly to the Official and not the AFP's general address. The reason for this is that any invoices received at the

APP's general address will be scanned and input to the automated on-line purchasing system for automatic matching to a purchase order. Because purchase orders are not raised for credit card transactions the system will not be able to match the invoice which will trigger unnecessary administrative effort to resolve the reasons why.

## CFI 03 - JUSTIFYING SPENDING

### *Commissioner's Rules*

- 03.1.1.1** *The justification for any spending proposal should be appropriate to the size, value and risk associated with the proposal.*
- 03.1.1.2** *The requirement to justify a spending proposal is the same irrespective of the transaction system chosen.*

#### Guidance:

All transactions have an underlying purpose or rationale which can range from the procurement of office supplies, fuel etc, to major one-off projects e.g. to support international police forces. There is normally a correlation between the value and risk of a spending proposal and level of documentation required to justify it.

Where the spending proposal relates to the purchase of goods and services, Officials should first refer to the National Guideline on Procurement and Contracting and relevant Procurement Strategy templates. For procurements between \$10,000 and \$80,000 it is recommended that Officials use these templates and consult with National Procurement and Contracts (NPC). This will ensure that the procurement will comply with the requirements of the FMA legislative framework, the AFP's better practice processes and AFP internal business rules. Referral to NPC of all procurement strategies over \$80,000 is mandatory prior to FMA Regulation 9 approval.

## CFI 04 - APPROVING SPENDING

### 04.1 Officials' responsibilities

#### Commissioner's Instructions

- 04.1.1** All spending proposals require the prior approval of an authorised Delegate (Regulation 9 delegate) before committing the AFP to a contract, agreement or arrangement.
- 04.1.2** A Regulation 9 delegate cannot approve a spending proposal that requires separate authorisation under Regulation 10 until that authorisation has been given in writing.

#### Discussion:

A spending proposal can represent a single transaction or multiple transactions depending on the nature of the proposal. For example the acquisition of an AFP vehicle could be regarded as a spending proposal yet the underlying transactions could encompass the acquisition of the vehicle, installation of the communications equipment, decals etc. Similarly a travel spending proposal can include airline fares, accommodation, per diems, local transport etc. In approving spending proposals that encompass more than one expenditure item or vendor, Officials need to ensure that the amount approved includes all proposed transactions associated with the spending proposal.

All spending proposals require prior approval under FMA Regulation 9. This includes transactions using the AFP corporate credit card where approval, purchase, delivery, acquittal and payment may occur simultaneously.

The FMA Regulations prevent a delegate from approving a spending proposal in circumstances where an FMA Regulation 10 authorisation is required. FMA Regulation 10 authorisation is required in the following circumstances:

- Where the spending proposal will involve expenditure in future financial years; and
- Where the spending proposal will lead to a contract, agreement or arrangement that provides indemnities to the other party or where contingent liabilities will arise.

#### Commissioner's Rule

- 04.1.2.1** *All spending proposals that may potentially require an FMA Regulation 10 authorisation must be referred to the Finance Governance Team before approval is given under FMA Regulation 9.*

### 04.2 Responsibilities of FMA Regulation 9 delegates in approving spending proposals

#### Commissioner's Instruction

- 04.2.1** An Approver delegate must not approve a proposal to spend public money unless the Approver is satisfied, after making reasonable inquiries, that the proposed expenditure is an efficient, effective, economical and ethical use of Commonwealth resources that is not inconsistent with the policies of the Commonwealth.

#### Commissioner's Rules

- 04.2.1.1** *An Approver may impose terms and conditions to an approval under Regulation 9.*

Discussion:

An approval does not necessarily have to be unconditional. For example, an approver may impose a condition such as 'subject to the conduct of an open approach to the market by a particular date' or subject to a certain event occurring.

**04.2.1.2** *An Approver delegate's authority is restricted to the authorised budgets over which they have budget responsibility or undertake a financial task in respect to that budget unless the delegation specifically states otherwise.*

Discussion:

The breadth of budget responsibility is dependent on the delegate's position within the AFP. For example, a National Manager would have budget responsibility for his or her own cost centre and all other cost centres within his or her business area. Conversely, a Coordinator will more than likely have budget responsibility at a cost centre/programme level only.

It should also be noted that some of the Commissioner's delegations specifically authorise expenditure outside a delegate's area of budget responsibility. These are clearly articulated in the Delegation Schedules.

**04.2.1.3** *An Approver delegate's authority is restricted to the limit of funds available. The limit of funds available means the Finance Committee approved budget less expenditure to date less unavoidable expenditure.*

Discussion:

A delegate will not be able to authorise a spending proposal where either the balance of funds available is negative or where the spending proposal will cause the remaining balance of funds available for other types of expenses to be negative. In this case, a request for additional funding is required to be given at the next level of approved budget. For example:

*The AFP Post in 'Antarctica' cost centre has a spending proposal, which if approved, would exceed available funds. The Coordinator 'Antarctica' needs to request additional funding from Manager 'Southern Hemisphere Police Operations'. If there are insufficient funds at that level, the next step is to seek approval from the 'National Manager Global Policing Operations'.*

Limit of funds available means the most recent Finance Committee approved budget less unavoidable expenses and expenses incurred to date as shown in the table below:

<b>Limit of Funds Available</b>	Finance Committee approved budget for Program X for the YYYY/YY period
<b>Less</b> Unavoidable expenses	Includes: <ul style="list-style-type: none"><li>• Costs incurred to date and recorded in SAP;</li><li>• Expected staff costs for the remainder of the current financial year;</li><li>• Ongoing contracted commitments such as a lease eg for a photocopier or software licences; and</li><li>• Any other expenses that cannot be avoided due to a previous arrangement, agreement or undertaking.</li></ul>
<b>Add</b> <b>Receipts not anticipated in approved budget</b>	Includes: <ul style="list-style-type: none"><li>• Internal budget transfers.</li></ul>
<b>Equals</b>	Limit of Funds Available

**04.2.1.4** *If there are insufficient funds at a level lower than portfolio level, a Reg 9 approval will need to be sought from a higher levelled delegate with sufficient appropriation.*

**04.2.1.5** *If there are insufficient funds at the portfolio level, an 'Unexpected Shortfall' request will need to be actioned urgently to seek approval from the CFO and one of the DCs or the COO for additional funding. No nominal or actual allocation can be made until approval is given.*

**04.2.1.6** *Once approval has been granted the request will go to the next AFP Finance Committee for endorsement.*

Guidance:

Where a funding shortfall is probable, Managers should act urgently to seek approval for extra funding. The submission should be made to the Chief Financial Officer through the Budgets and Reporting section and must include at a minimum:

- The current approved budget;
- An explanation as to the reasons why that budget has resulted in a funding shortfall - this should be with reference to the assumptions that underpinned the construction of the budget;
- A detailed calculation of the amount of funding required; and
- A list of the assumptions used in calculating the funding required.

**04.2.1.5** *For probity reasons, Officials must never seek approval of proposals involving the expenditure of public money from a subordinate, even if that subordinate has a delegated authority sufficient to approve the proposal.*

**04.2.1.6** *Officials should always seek approval from their superiors particularly where a spending proposal will involve a real or perceived direct benefit or a perceived conflict of interest may exist. This means that approvers must not approve any actions for their own direct benefit.*

**04.2.1.6** *There may be exceptional circumstances where it is not possible to obtain a supervisor's approval. In these circumstances a delegate may approve a spending proposal involving a real or perceived direct benefit provided:*

- *the payment relates to a formal entitlement resulting from an agreement or determination or is directly related to an AFP business requirement; and*
- *the circumstances requiring self approval are formally documented.*

Guidance:

In instances where this is impractical an approver can approve a spending proposal where there is a real or perceived direct benefit to them provided the payment is authorised by a pre-existing arrangement (eg an AWA or determination) or is clearly AFP business related. For example, some overseas posting arrangements provide entitlements to compensate for the costs of living, education etc. In single person posts it may be impractical to seek approval from a supervisor, a delegate can approve the spending proposal provided the entitlement has been formally acknowledged by the AFP through an agreement or instrument and the spending proposal is in accordance with the terms of that agreement or determination.

Similarly, if an approver is required to travel domestically for AFP related business purposes and the obligation to travel has not been determined by the approver, he/she can approve the spending proposal where it is impractical to seek approval from a supervisor. In the interest of probity the circumstances requiring the self approval needs to be properly documented.

The types of spending proposals involving real or perceived direct benefits that will always require approval by a supervisor include attendance at presentations, enrolment in courses, spouse travel, portable and attractive items, professional membership fees, subscriptions, hospitality and entertainment or payments to or for a member's direct family or a business entity with which the official or the official's family is associated.

## **04.3** **Forms of approval for expenditure of public money**

### **Commissioner's Rules**

**04.3.1.1** *A written approval under FMA Regulation 9 can take many forms. However, at a minimum it should contain an estimate of the GST inclusive amount, description and a specific reference to FMA Regulation 9 ('Reg 9' is sufficient).*

- 04.3.1.2** *If goods and services have already been received, the automated on-line purchasing system will electronically workflow a 'shopping cart' to an authorised delegate for approval. However, some other form of Reg 9 approval must have been sought prior to ordering the goods or services.*
- 04.3.1.3** *Where a corporate credit card holder is also an authorised approver delegate, the delegation is exercised at the point of purchase. The delegate should note 'Reg 9 approved' on the transaction documentation and sign the documentation.*
- 04.3.1.4** *It is recommended that other forms of written approval also include that the spending proposal is an efficient, effective, economical and ethical use of public money that is not inconsistent with prescribed Commonwealth policies.*
- 04.3.1.5** *Where it is impractical to obtain a written approval a delegate may give verbal Reg 9 approval, provided that the terms of the approval are documented in writing as soon as practicable thereafter, in accordance with FMA Regulation 12.*

Guidance:

The AFP uses various mechanisms to give effect to an FMA Regulation 9 approval. These include the purchase request form, the Reg 9 form in Procurement Strategy templates, overarching (blanket) Reg 9 forms, electronic approvals via an e-mail template, electronic approvals via the automated purchasing system and minutes. It is recommended that members use pre formatted forms wherever possible as this will ensure that all relevant details relating to the spending proposal and approval have been included.

Where the spending proposal relates to the purchase of goods or services, National Guideline on Procurement and Contracting requires the development of a procurement strategy.

Overarching (blanket) Regulation 9 approvals allow a delegate to pre-approve a number of individual spending proposals. It is recommended that Blanket Reg 9 approvals be used for routine unavoidable purchases. Delegates are ultimately accountable for the approvals they provide and accordingly, they should carefully consider exactly what they are approving and include some degree of specificity relating to time periods, transaction limits, nature and the total amount of expenditure being approved.

s37(2)(b)

s37(2)(b)

**CFI 04 Source References:**

FMA Act sections: 14, 15, 44

FMA Regulations: 8, 9, 10, 11, 12

## **CFI 05 – PROCUREMENT OF GOODS AND SERVICES (INCLUDING ENGAGEMENT OF CONSULTANTS AND CONTRACTORS)**

### **05.1 Commonwealth Procurement Guidelines (CPGs) and AFP National Guideline on Procurement and Contracting**

#### **Commissioner's Instructions**

**05.1.1** Officials must comply with the requirements of the *Commonwealth Procurement Guidelines (CPGs)* issued and authorised by the Minister for Finance and Deregulation.

#### **Commissioner's Rule**

**05.1.1.1** *Officials must also comply with the requirements of the AFP National Guideline on Procurement and Contracting. This rule is applicable irrespective of the transaction system chosen.*

#### **Discussion:**

The National Guideline on Procurement and Contracting provides advice on the application of the entire Commonwealth Procurement Framework (including the CPGs, Finance Circulars and Procurement Policy & Guidance). This Guideline also provides information on methods of procurement, registration and management of contracts etc.

It also includes additional requirements where a referral to the National Procurement and Contracts Team is necessary prior to seeking FMA Regulation 9 Approval. These may relate to procurements valued at over \$80,000 and all consultancy services.

Compliance with the AFP National Guideline on Procurement and Contracting will ensure compliance with the CPGs.

### **05.2 Establishing Supply Arrangements for Recurrent Purchases**

#### **Commissioner's Rule**

**05.2.1.1** *Officials must review all purchases of a similar and recurring nature and where the aggregate amounts exceed \$80,000, they must consider establishing supply arrangements in accordance with the CPGs.*

#### **Discussion:**

'Value for money' is the core principle underpinning Australian Government procurement. Officials need to consider the cumulative totals of recurrent purchases in deciding whether they are achieving the best 'value for money' and are complying with the Commonwealth Procurement Guidelines (CPGs). The CPGs require Officials to value their procurement activities by taking into account all contracts for the same type of goods or services awarded at the same time or over a period of time irrespective of the number of suppliers used. This means that procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold.

### **05.3 Formalising Terms and Conditions**

#### **Commissioner's Rules**

**05.3.1.1** *Purchases up to \$5,000 (GST inclusive), **excluding asset purchasing**, do not require the creation of a purchase order and should be paid by AFP corporate credit card.*

**05.3.1.2** *The terms and conditions for all purchases \$5,000 and above are to be formalised prior to the delivery of the goods or services in accordance with the contract types set out in the National Guideline on Procurement and Contracting.*

Discussion:

Officials should ensure that there is a clear understanding of the terms and conditions for all potential payments at the time of ordering goods and services. Where a written contract does not exist, the AFP should ensure that sufficient written documentation or a written contract is formulated as soon as practicable. For low value, routine purchases, less than \$10,000 (including GST), a purchase order would be considered sufficient documentation.

## **05.4 Mandatory referral of certain procurements to the National Procurement and Contracts Team**

### **Commissioner's Rule**

**05.4.1.1** *Prior to obtaining delegate approval under FMA Regulation 9 all procurements relating to consultancies (irrespective of amount) and all procurements valued over \$80,000 (GST inclusive) must be referred to the National Procurements and Contracts Team via provision of a Procurement Strategy.*

Discussion:

It is recommended that Procurement Strategies valued at less than \$80,000 be referred to National Procurement and Contracts prior to obtaining FMA Regulation 9 approval to ensure compliance with the Commonwealth Procurement Guidelines.

## **05.5 Internet ordering**

### **Commissioner's Rules**

**05.5.1.1** *Goods may be ordered via the internet or the AFP's Intranet (HUB) under the terms of a Deed of Standing Offer (DoSO) eg stationery, uniform supplies, etc, provided the internet ordering process forms part of such an agreement.*

Guidance:

Officials should note that there are whole of Government procurement obligations that relate to the procurement of travel, laptops, desktops, printers, photocopiers and mobile phones. It is mandatory under the CPGs that Agencies buy these items in accordance with the whole of Government Arrangements. Officials should contact NPC or ICT Business Support for more information.

**05.5.1.2** *Other goods may be ordered over the internet subject to the following conditions:*

- *the ordering site is secure ie it should have a security key, and details of the supplier's address, telephone and facsimile numbers should be identifiable;*
- *the supplier will issue a valid tax invoice and receipt (within Australia) or a formal invoice and receipt (outside Australia); and*
- *the payment gateway is encrypted.*

Discussion:

Internet purchases may still require procurement strategies to be developed, where appropriate and require adherence to the AFP's National Guideline on Procurement and Contracting.

The provisions above effectively prohibit the purchase of goods from on-line brokers (such as e-bay) unless the supplier is a legitimate business ie has an Australian Business Number (ABN) or an Australian Company Number (ACN).

## **05.6 Grievance handling procedures**

### **Commissioner's Rules**

**05.6.1.1** *In the event that a grievance is received in relation to any AFP procurement process, the aim should be to manage the grievance process internally. National Procurement and Contracts is responsible for ensuring that a grievance handling procedure is in place and implemented.*

**05.6.1.2** *All procurement grievances must be referred to National Procurements and Contracts.*

## **05.7 Overseas Procurements**

### **Commissioner's Rules**

**05.7.1.1** *Appendix A of the Commonwealth Procurement Guidelines (CPGs) exempts the following procurements from Mandatory Procurement Procedures detailed at Division 2 of the CPGs:*

- *Procurement for the direct purpose of providing foreign assistance; and*
- *Procurement of property or services (including construction) outside Australian Territory, for consumption outside Australian Territory.*

**05.7.1.2** *Notwithstanding that such procurements are exempt from the Mandatory Procurement Procedures detailed at Division 2 of the CPGs, Officials are still required to ensure that these procurements are undertaken in accordance with the principle of value for money and with the requirements of Division 1 of CPGs and the AFP's National Guideline on Procurement and Contracting.*

Discussion:

Overseas Procurements still require procurement strategies to be developed as appropriate and require adherence to the AFP's National Guideline on Procurement and Contracting.

#### **CFI 05 Source References:**

- FMA Act sections: 44
- FMA Regulations: 7, 8, 9, 10, 11, 12

## CFI 06 - ENTERING INTO CONTRACTS

### 06.1 Only authorised Officials can enter into contracts

#### Commissioner's Instruction

- 06.1.1** Only Officials authorised with an FMA Act Section 44(1) delegation in Schedule B to these Instructions can enter into a contract, agreement or arrangement under which public money is, or may become payable.

#### Commissioner's Rule

- 06.1.1.1** Any contract, agreement or arrangement entered into by an Official must be in accordance with the terms and conditions of the approval of the spending proposal under FMA Regulation 9.

### 06.2 Contracts with a value over \$10,000 (GST inclusive)

#### Commissioner's Rule

- 06.2.1.1** All formal contracts with a value over \$10,000 (GST inclusive) must be forwarded to the National Procurement and Contracts team under cover of a Contract Registration Form after execution.
- 06.2.1.2** All formal contracts with a value over \$80,000 (GST inclusive) or involving consultancy services, sponsorship by the AFP of events or organisations, procurements with significant associated risk, or contingent liabilities, must be referred to AFP Legal prior to signing of the contract and issue to the supplier.

### 06.3 Purchases \$5,000 (GST inclusive) and above

#### Commissioner's Rule

- 06.3.1.1** All purchases \$5,000 (GST inclusive) and above must be evidenced in writing. The formalisation of the terms and conditions at the procurement stage will become the basis of a written contract which may take the form of an AFP Purchase Order, exchange of letters, official order issued under a Deed of Standing Offer, short form contract or long form contract/agreement.
- 06.3.1.2** All asset purchases \$2,000 (GST exclusive) and above require a purchase order and may also require a formal contract,

#### Discussion:

The AFP's National Guideline on Procurement and Contracting sets out the various contract types used within the AFP and the thresholds and circumstances under which each contract type is used.

### 06.4 Contract management and administration

## **Commissioner's Rule**

**06.4.1.1** *An Official must be appointed as the responsible officer to manage and administer all contracts. That person is also responsible for formally documenting receipt of goods and services under the contract.*

### **Guidance:**

All purchases represent some form of contract. For small purchases over the counter, the contract is verbal in that the AFP agrees to pay a price for goods on display. Where a purchase order is issued to a supplier, to form a contract, the purchase order details the terms and conditions that apply. For higher value procurements, there is likely to be a stand alone contract that both parties agree to and sign. Irrespective of the form of contract, an official must be responsible for ensuring that contract deliverables are received in accordance with the contract terms and conditions including the quantity, quality and timeliness of delivery of the contracted goods or services.

For the purposes of maintaining a strong internal control framework via segregation of duties, the person appointed as the contract manager should not be the same person who provided FMA Regulation 9 approval to enter into the contract, nor the person authorising payment for the goods and services received.

## **06.5 Payment terms**

### **Commissioner's Rule**

**06.5.1.1** *Officials should not agree to payments in advance of services being received unless:*

- *Payment in advance of services being received is standard industry practice; or*
- *Payment in advance of services provides significant advantages to the AFP and does not present a risk to the AFP.*

### **Guidance:**

Payment in advance is often standard practice for many industries examples such as software licences and rent are often paid in advance. In other circumstances, payment in advance should be avoided unless there are significant advantages to be gained by the AFP. These advantages are normally financial in nature, ie the AFP would need to receive discounts in excess of the pro-rata borrowing costs of the Commonwealth (normally the equivalent bond yield rate). Officials also need to consider any risks to the AFP - these risks predominately relate to the likelihood that goods and services will actually be delivered. For example, the supplier may become insolvent prior to the delivery of the goods and services. All prepayments for goods or services must be detailed in writing within an appropriate form of contract.

## **06.6 Use of the AFP Seal**

### **Guidance:**

When it is necessary to use the AFP corporate seal on a contract or other corporate document, the Commissioner's Office should be contacted to make arrangements to take the relevant documents to the Office. The Commissioner's staff will then arrange for the seal to be applied to the documents, register the purpose for which it is being used and for the Commissioner to sign as the appropriate authority.

#### **CFI 06 Source References:**

FMA Act sections: 44  
FMA Regulations: 7, 8, 9, 10, 11, 12

## CFI 07 - MANAGING SERVICE DELIVERY

### 07.1 Contract management and administration

#### *Commissioner's Rule*

**07.1.1.1** *The person appointed as responsible for managing a contract must manage and administer that contract (including managing risks) in accordance with the requirements of the National Guideline on Procurement and Contracting.*

#### Guidance:

The National Guideline on Procurement and Contracting establishes the basic principles of contract management. Adherence to these principles ensures that the AFP receives contract deliverables in accordance with the contract terms (nature, quantity, quality and within agreed timeframes) and that any payments under the contract minimise the AFP's financial and contractual risk.

## CFI 08 - PAYMENT

### 08.1 Officials' responsibilities

#### *Commissioner's Rules*

**08.1.1.1** *Only officials with a delegation under FMA section 44(1) can authorise the payment for goods and services.*

**08.1.1.2** *Prior to authorising a payment, Officials must ensure that:*

- (a) the proposed payment is correct as to amount;*
- (b) the spending proposal has been approved by an Approver with the relevant level of delegated authority;*
- (c) the account has not been previously paid;*
- (d) all credit notes have been taken to account in determining the amount payable;*
- (e) expenditure is recorded against the correct charge code(s) and cost centre as described in the Approver's approval;*
- (f) the payee and the name of the organisation issuing the invoice correspond to the contract and/or purchase order;*
- (g) there is evidence that the goods or services in respect of the account have been received or satisfactorily rendered and the conditions of the contract or agency agreement have been satisfied;*
- (h) the payment is consistent with the terms and conditions of any applicable contract; and*
- (i) the invoice is appropriately identified as a 'Tax Invoice' and the amount of GST is shown separately when payment relates to a Taxable Supply (Australian based purchases only).*

**08.1.1.3** *The authority to approve payments of monies owed by the Commonwealth pending probate has been delegated to the Commissioner. The Commissioner has further delegated this authority to all AFP SES Band 2's and 3's as well as the Financial Controller and Manager Financial Services. The delegation does not have a transaction limit and is applicable across the whole of the AFP.*

#### *Guidance:*

Before authorising a payment pending probate the delegate should seek advice from AFP Legal team.

### 08.2 Direct credits for payments over \$2,000 (GST inclusive)

#### *Commissioner's Rule*

**08.2.1.1** *All payments over \$2,000 (GST inclusive) other than credit card payments should be made by direct credit via Electronic Funds Transfer (EFT). Cheques should be used only when payment is unable to be made by means of direct credit.*

## **08.3 Payment by Corporate Credit Card for purchases (other than assets)**

### *Commissioner's Rules*

**08.3.1.1** *Officials are encouraged to pay for all purchases (other than assets) under \$5,000 (GST inclusive) using the corporate credit card.*

**08.3.1.2** *Authority from the Coordinator or Manager Financial Services is required where the AFP Corporate Credit Card is to be used for purchases \$5,000 and above.*

#### Discussion:

There may be exceptional circumstances where a credit card is the only method of payment for certain transactions eg overseas airlines or motels. For advice in respect to other scenarios contact [governancefinance@afp.gov.au](mailto:governancefinance@afp.gov.au)

**08.3.1.3** *Officials are to ensure that invoices and other documentation relating to credit card purchases are addressed directly to the official and not to the AFP.*

#### Guidance:

The rationale for Commissioner's Rule 08.3.1.2 is to avoid unnecessary administrative effort in Shared Services matching an invoice received to a purchase order where no purchase order has been raised and to avoid apparent invoice splitting.

## **08.4 Payment by cheque**

### *Commissioner's Rules*

**08.4.1.1** *Cheques are to be prepared in such a manner as to minimise the possibility of any fraudulent alteration to words or figures. All cheques are to include the:*

- (a) words 'Not Negotiable' written across the face of the cheque;*
- (b) name of the person or organisation as payee (except when the cheque proceeds are to be paid into a cash Advance Account);*
- (c) signatures of two Officers authorised to sign cheques relating to the official account being used;*
- (d) amount being paid in numeric and alphabetical forms; and*
- (e) current date ie not pre-dated or post-dated.*

**08.4.1.2** *Signatories must not pre-sign cheques under any circumstances.*

**08.4.1.3** *A record of manual cheque details must be maintained and reconciled monthly to the bank account in order to identify unrepresented cheques and to validate cheque presentation details.*

**08.4.1.4** *Cheques issued from official AFP bank accounts may only be given to a payee upon presenting proof of identification or when collection of the cheques is to be made to a person other than the payee, evidence of authorisation for collection must be presented in writing. This authorisation must include the signature of the payee. Proof of identification of the person collecting the cheque must also be presented, checked and kept on file together with any authorisation.*

#### Guidance:

Proof of identification of the person collecting the cheque must be noted on the back of the authorisation (eg drivers licence number, passport number etc).

## 08.5 Standard terms of trade

### Commissioner's Instruction

- 08.5.1 All invoices must be paid within 30 days or less, subject to contract terms.**
- 08.5.2 All contracts with small businesses must include a requirement that the AFP will pay invoices within 30 days from the receipt of a correctly rendered invoice and provisions for the payment of penalty interest where invoices received from small business exceed 30 days.**

#### Definition:

Small business means an enterprise that employs less than the Full Time Equivalent of 20 persons on the day that a contract is executed.

#### Discussion:

The 30 day payment policy has been formally approved by the Department of Finance and Deregulation through the issue of the Finance Circular '30 Day Payment Policy for Small Business.'

### Commissioner's Rule

- 08.5.1.1 All small businesses must be paid within 30 days from the receipt of a correctly rendered invoice. This rule does not apply to purchases utilising administered funds.**

#### Discussion:

Many contracts with small businesses have been in place for some time and a full review of each contract would be cost prohibitive. This Commissioner's rule effectively ensures that the underlying intent of the policy has been implemented within the AFP, ie vendors being able to charge penalty interest if they are not paid within 30 days of issuing a correctly rendered invoice,. As a matter of sound business practice all payments should be made in accordance with the payment terms of the contract or, in the absence of specific payment terms, within normal commercial terms of 30 days.

## 08.6 Drawing Rights approval

### Commissioner's Instruction

- 08.6.1 Only those Officials who have been delegated the power by the Commissioner can authorise Drawing Rights to Fund Debit Requesters to enable them to:**
- (a) make a payment of public money for a specified purpose;***
  - (b) request the debiting of an amount against a particular appropriation; and***
  - (c) debit an amount from a Fund against a particular appropriation.***

#### Discussion:

A payment of public money generally occurs when money leaves the Consolidated Revenue Fund (CRF). The AFP's Official bank account represents a part of the Consolidated Revenue Fund. Examples of making payments include:

- The issuing of a cheque;
- Handing over of cash;
- Use of a debit card; and
- Instructions for Electronic Funds Transfers.

### Commission's Instruction

- 08.6.2 An Official who makes a payment from an Advance Account (whether held in petty cash or in a bank account) must possess a Drawing right.**

Discussion:

Any Official making a payment out of a petty cash float, an advance account or temporary advance will require a drawing right as this involves money leaving the CRF and the debiting of the relevant appropriation. In order to exercise a Drawing Right the delegate must ensure that funds are available. However, withdrawing money from an official account to set up a petty cash or advance account float does not require a drawing right as the appropriation is not being debited and the money remains in the CRF.

**CFI 08 Source References:**

FMA Act sections: 35

FMA Regulations: 7

## CFI 09 - NON-ROUTINE SPENDING – SPECIAL INSTRUCTIONS AND RULES

The AFP has special compliance requirements for non-routine transactions. These special compliance requirements are either generated by specific FMA Act or Regulations, or result from sound internal control practices and approval processes. The requirements are in addition to, and do not replace, the previous Spending CFI's. These special instructions relate to asset purchases, gifts, grants, hospitality and entertainment and overseas purchases via the Department of Foreign Affairs and Trade and travel.

### 09.1 Assets and Portable and Attractive Item Purchases

#### *Commissioner's Rules*

- 09.1.1.1** *Where Officials use the automated on-line purchasing system to create a purchase order for an asset, they must use the 'create a shopping cart for a new asset' menu item.*
- 09.1.1.2** *Where Officials use the manual Purchase Request Form to purchase assets they must ensure the asset location column is completed.*
- 09.1.1.3** *All portable and attractive item purchases must be coded to Portable and Attractive items (GL account 434130).*

#### Definition:

Assets are defined in the Australian Accounting Standards as a resource:

- Controlled by an entity as a result of past transactions or events; and
- From which future economic benefits are expected to flow to the entity.

In simple terms an asset is a resource that is expected to provide benefits over more than one financial year. The AFP currently applies a threshold of \$2,000 (GST exclusive) before transactions that meet the definition of an asset and can be capitalised. Please consult your Finance Coordinator for assistance.

- 09.1.1.4** *All assets and portable and attractive items must be appropriately managed and accounted for.*

### 09.2 Gifts

#### *Commissioner's Rules*

- 09.2.1.1** *Only officials authorised under FMA Section 43(b) and (c) can approve gifts. Officials must use the appropriate **AFP Gifting Approval form.***
- 09.2.1.2** *A copy of the AFP Gifting Approval Form must be forwarded to the Finance Governance Team for registration.*
- 09.2.1.3** *Gifting must be conducted in accordance with the **National Guideline on Offering Gifts and Benefits.***

#### Definition:

The essential elements of a gift are that they are non-reciprocal (ie the organisation giving the gift expects nothing in return) and that the organisation giving the gift does not impose any conditions or expectations from the recipient. Gifts include cash, negotiable instruments, and all goods or services. Common forms of gifts made by the AFP include:

- Cash or assets to overseas police forces; and

- Flowers (restrictions apply see Finance Governance), chocolates and other presents.

It is necessary to consider the overall spending value. Items which are not generally considered gifts are:

- memorabilia (plaques, tie pins etc);
- promotional gift packs presented to the general public during road shows and special events;
- written documents and information packs handed out at conferences and training sessions conducted by the AFP; and
- Wreaths .

## 09.3 Grants

### Commissioner's Instruction

#### 09.3.1 Official's must comply with the Commonwealth Grant Guidelines – Policies and Principles for Grants Administration.

#### Commissioner's Rules

##### 09.3.1.1 *The details of all grants must be forwarded to Finance Governance as soon as possible from the date of approval.*

#### Definition:

The Commonwealth Grant Guidelines define a grant as *"an arrangement for the provision of financial assistance by the Commonwealth:*

- a. under which public money is to be paid to a recipient other than the Commonwealth; and*
- b. which is intended to assist the recipient achieve its goals; and*
- c. which is intended to promote 1 or more of the Australian Government's policy objectives; and*
- d. under which the recipient is required to act in accordance with any terms or conditions specified in the arrangement."*

#### Discussion:

The AFP as a general rule does not administer grant programmes. It does, however, provide assistance to other organisations and in some instances this form of assistance would fall within the definition of a grant.

The types of AFP transactions that may qualify as grants include:

- Research grants that are non specific i.e. the funding supports general research and is not acquiring specific research services (as an example the majority of the Australian Research Council (ARC) grants are specific and reciprocal in nature and would not be classified as a grant);
- General support for tertiary and other educational institutions; and
- Gifts of cash that are conditional. A gift, while representing a form of financial assistance, does not require the recipient to undertake the expenditure in accordance with a specified purpose(s). However, if a financial arrangement takes the form of a conditional gift, it is essentially a grant of money, subject to conditions, and is considered a grant for the purposes of the Commonwealth Grant Guidelines.

If the transaction qualifies for reporting as Official Development Aid (ODA), it is excluded from the definition of a grant in the Commonwealth Grant Guidelines. For more information on the ODA rules contact [External-Budgets@afp.gov.au](mailto:External-Budgets@afp.gov.au).

The provision of financial assistance would normally be in the form of cash or cash equivalents. It would therefore be difficult to envisage the gifting of property as a grant.

## 09.4 Hospitality and Entertainment

### Commissioner's Instruction

**09.4.1** *Only officials with a delegation for hospitality and entertainment can approve a spending proposal for hospitality and entertainment*

**09.4.2** *All hospitality and entertainment expense approvals must be approval via use of the AFP Official Hospitality and Entertainment form..*

#### **Commissioner's Rules**

**09.4.1.1** *An Official cannot approve a spending proposal for hospitality and entertainment where the expenditure could be perceived as a personal benefit to the Official.*

**09.4.1.2** *Expenditure on hospitality and entertainment must be in accordance with the **National Guideline on Hospitality and Entertainment.***

**09.4.1.3** *All hospitality and entertainment must be approved by a relevant delegate using the AFP Official Hospitality form. When completing the form the 'update field' for Fringe Benefits Tax liability must also be activated and display the estimated FBT liability prior to FMA Regulation 9 sign off.*

#### **Definition:**

Hospitality and entertainment means any form of non reciprocal benefit (other than a gift or a grant) provided by the AFP or an AFP official to another organisation(s) or individual(s). Although it would be expected that some benefits would accrue to the AFP from hospitality and entertainment, those benefits are not immediate, tangible or measureable.

#### **Comment:**

The Omnibus FMA Regulation 9 delegation (schedule 1) separates hospitality and entertainment from other types of expenditure and only provides authority to approve these spending proposals to a restricted number of Officials.

## **09.5 Overseas Purchases via the Department of Foreign Affairs and Trade**

#### **Introduction:**

The Service Level Agreement (SLA) with DFAT provides for DFAT to make payments on behalf of the AFP at locations where DFAT operates a post. The SLA provides that the AFP will provide instructions to DFAT as to which AFP members are authorised to instruct DFAT to make payments and any conditions relating to those payments.

When DFAT makes a payment on instructions from the AFP, DFAT uses funds from its own appropriation using its own governance arrangements including delegations.

#### **Commissioner's Rules**

**09.5.1.1** *Relevant National Managers are responsible for providing instructions to the Department of Foreign Affairs and Trade (DFAT) on the authority limits (and conditions) within which AFP members overseas must operate when instructing DFAT to make payments on behalf of the AFP.*

**09.5.1.2** *All instructions provided to DFAT must be consistent with the Commissioner's Instructions and Commissioner's Rules contained in CFIs and authority limits must be consistent with the equivalent levels of authority contained in the Delegations Schedules.*

**09.5.1.3** *Expenditure by members of the International Network on representation must be in accordance with the **National Guideline on Representation Expenditure.***

## 09.6 Travel

### *Commissioner's Rules*

- 09.6.1.1** *Travel must be conducted in accordance with the **Practical Guides on Travel.***
- 09.6.1.2** *Only authorised FMA Regulation 9 delegates can approve requests for domestic travel in Spendvision.*
- 09.6.1.3** *An approval of a request to travel in Spendvision represents an FMA Regulation 9 approval to spend public money.*

#### Discussion:

A separate Regulation 9 approval is not necessary for travel approved in Spendvision. Before approving travel the delegate must be satisfied that the spending proposal is an efficient, effective, economical and ethical use of public money that is not inconsistent with the policies of the Commonwealth (these are the requirements of FMA Regulation 9).

Because the Spendvision approval is considered to be an FMA Regulation 9 approval, the delegate must ensure that the proposed travel costs include all costs associated with the travel request. This will include airline travel, taxis or car hire, accommodation, meals and allowances and any other expenditure associated with the travel approval.

- 09.6.1.4** *Only certain authorised delegates can approve spending proposals for overseas travel.*

#### Comment:

The Omnibus FMA Regulation 9 delegation (Schedule 1) separates overseas travel from other types of expenditure and only provides authority to approve these spending proposals to a restricted number of officials. Schedule 2 of the Delegations also contains special delegations in respect to the AFP's overseas operations – Officials need to review both schedules in order to determine their levels of authority to approve overseas travel.

#### **CFI 09 Source References:**

FMA Act sections: 44  
FMA Regulations: 7, 8, 9, 10, 11, 12

# **COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)**

## **PART 3**

### **RECEIVED PUBLIC MONEY AND BANKING**

## **Overview of Part 3 – Received Public Money and Banking**

This Part addresses the requirements relating to the receipt of public money. This includes banking requirements, procedures for receipts received by mail, receipts by outsiders, dishonoured cheques and unpresented cheques.

### **Structure of Part 3**

Part 3 comprises only one CFI – CFI 09 Received Public Money and Banking.

## CFI 10 - RECEIVED PUBLIC MONEY AND BANKING

### 10.1 Officials' Responsibilities

#### Commissioner's Instruction

**10.1.1** All Received Money is public money and must be credited to the AFP's bank account on the same day or on the next banking day at the latest, or on another day approved by the Commissioner.

#### Commissioner's Rules

**10.1.1.1** *If an Official other than a Cashier receives Received Money, that Official must pass the money to a Cashier on the day of receipt or, if not practicable, on the next working day.*

**10.1.1.2** *A Cashier must:*

- (a) maintain adequate records of collections and deposits to the AFP bank account, including amounts which are given to the National Cashier to credit the bank account;*
- (b) ensure that public money is not deposited into an account that is not an Official account; and*
- (c) ensure that the receipt transaction is coded correctly.*

#### Guidance:

In respect to 09.1.1.2 (c) FMA Regulation 15 prescribes five categories of receipts that are automatically appropriated to the AFP via Section 31(1) of the FMA Act. It is important that the coding of the receipt properly reflects whether the monies are automatically appropriated and available to the AFP. The categories of receipts described in FMA Regulation 15 are:

- (a) specified amounts received by an agency;
- (b) receipts that offset the direct costs of an agency;
- (c) receipts received in relation to a specified program;
- (d) receipts received in relation to the sale of minor departmental assets of the agency subject to a five per cent annual limit; and
- (e) receipts received by an agency from business activities subject to a five per cent annual limit.

### 10.2 Issuing receipts

#### Commissioner's Rule

**10.2.1.1** *Receipts need not be issued as a matter of course. However, receipts must always be issued on the receipt of cash paid by a member of the public or when requested. If a request for a receipt is made via mail, the receipt should be forwarded to the payer at the earliest opportunity.*

### 10.3 Mail remittances

#### Commissioner's Rules

**10.3.1.1** *All mail remittances must be properly safeguarded and promptly brought to account.*

**10.3.1.2** *Where practical, all inward correspondence to an AFP Office should be opened by one Official in the presence of a second Official. The amount and nature of any remittances received, including valuable enclosures should be recorded. The following details are to be recorded:*

- *date of receipt;*
- *name of sender/drawer;*
- *name of bank and branch;*
- *type of payment eg cheque, money order, cash etc;*
- *amount;*
- *number of cheques, money orders etc;*
- *when appropriate, initials of the two persons opening the mail and the Officer receiving the cash values; and*
- *official receipt number (when applicable) issued by the Cashier/National Cashier (to clear the remittance book).*

**10.3.1.3** *Cheques, money orders or postal orders that are to be credited to an Official bank account must be crossed and marked immediately on receipt as follows (using a stamp provided for the purpose):*



## **10.4** Receipt of foreign currency

### **Commissioner's Rules**

**10.4.1.1** *Officials who receive public money in a non-bankable currency (including money that becomes public money upon receipt) must ensure the protective custody of that money.*

Guidance:

'Money' includes cheques and similar instruments, and 'non-bankable currency' means:

- a currency that cannot be banked; or
- a currency, the banking of which would, in the opinion of the Commissioner, involve significant costs or administrative difficulty.

In relation to (b) above, the currency would be of a type that could not be easily converted to Australian dollars because quoted exchange rates are not available. This often occurs in relation to the currencies of countries with hyper-inflation.

**09.4.1.2** *All queries relating to the receipt and handling of foreign currency should be referred to Team Leader, Treasury in Financial Services.*

## **10.5** Receipt and Spending of Public Money by outsiders

### **Commissioner's Instructions**

- 10.5.1** The Commissioner or his authorised delegates may enter into an agreement or arrangement with an outsider for the receipt and custody of public money. The agreement must:
- Not exceed five years and must be able to be terminated by the Commonwealth at any time;
  - Specify the banking arrangements, including frequency, which are to be followed by the Outsider and the frequency of remittance to the Commonwealth;
  - Ensure that the frequency of remittance provides the best cash management outcome for the Commonwealth, balanced against any savings or cost advantages for less frequent remittances; and
  - Specify that any interest earned is to be remitted in full to the Commonwealth.
- 10.5.2** An Outsider commits an offence if they receive or have custody of public money under an agreement or arrangement; and
- (a) they make a payment of the public money; and*  
*(b) that payment is not authorised by the agreement or the arrangement.*
- 10.5.3** A drawing right under FMA Act s. 27(1)(c) needs to be issued to the Outsider to allow the Outsider to remit monies collected to the AFP, where monies have not been initially banked into an Official account.

**Guidance:**

The delegations do not provide authority to the Commissioner to authorise Outsiders to make payments from monies collected on behalf of the AFP (except for remittances to the AFP). Accordingly, any agreement with an Outsider to collect public monies must include a provision prohibiting the payment of public money other than remittance to the AFP.

**Commissioner's Rule**

- 10.5.1.1** *Requests for authorisation of an agreement or arrangement for an Outsider to receive or have custody of public money should be made to the Coordinator, Financial Services in the first instance.*

## **10.6 Dishonoured cheque administration**

**Commissioner's Rules**

- 10.6.1.1** *When advice is received from the bank that a cheque has been dishonoured the Cashier/National Cashier who issued the receipt for the cheque should:*
- (a) record the details of the cheque in a file created for that purpose;*  
*(b) if possible, obtain a photocopy of the cheque from the bank; and*  
*(c) advise their immediate supervisor of the circumstances surrounding the dishonoured cheque.*
- 10.6.1.2** *A dishonoured cheque should only be re-presented to the bank once. When cheques are further dishonoured, debt recovery action should be undertaken, including recovery of dishonour fees charged by the bank.*

## **10.7 Unpresented cheques**

**Commissioner's Rule:**

**10.7.1.1** *If an AFP cheque is returned to the AFP or a cheque has not been presented within 15 months of issue, Officials must advise the Reserve Bank to stop the cheque. The transaction entries represented by the cheque are to be reversed in the AFP's financial management system.*

**CFI 10 Source References:**

FMA Act sections: 8, 9, 10, 11, 12, 14, 15, 16

FMA Regulations: n/a

# **COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)**

## **PART 4**

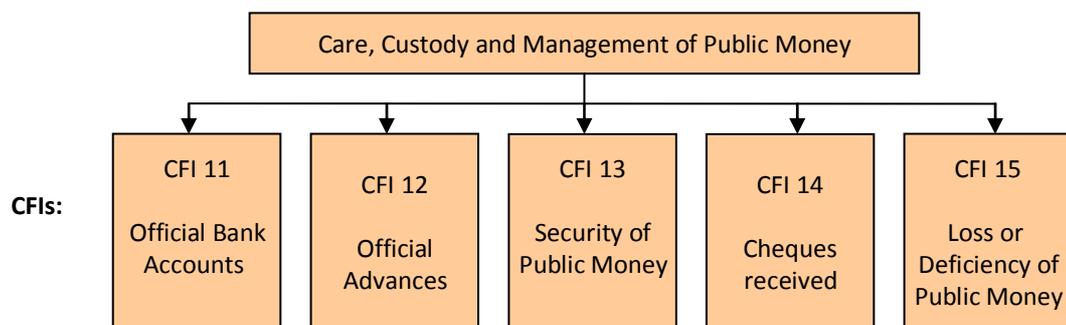
### **CUSTODY, CONTROL AND MANAGEMENT OF PUBLIC MONEY**

## Overview of Part 4 – Care, Custody and Management of Public Money

This Part addresses the physical care and custody of public money, whether in the form of cash, electronic funds transfers, cheques or official bank accounts. The proper care and custody of public money is one of the fundamental disciplines underpinning the conduct of the Commonwealth's financial affairs.

### Structure of Part 4

The Commissioner's Instructions contained in Part 4 are structured as follows:



Supporting National Guidelines include the National Guideline on Processes to be followed in the Event of a Loss or Deficiency of Public Money or Public Property.

## CFI 11 - OFFICIAL BANK ACCOUNTS

### 11.1 Different types of public monies are to be held in separate bank accounts

#### *Commissioner's Rules*

#### **11.1.1.1 *Separate bank accounts must be maintained for departmental monies, administered payments, administered receipts and special public monies.***

#### Discussion:

There are a number of types of Official bank accounts, including:

- Departmental accounts;
- Administered payment accounts;
- Administered receipt accounts;
- Official SPM (Special Public Money) accounts; and
- Official exempt SPM Accounts.

Administered receipts are receipts that are collected by the AFP from persons or organisations external to the Commonwealth. This would exclude receipts from other agencies and refunds of administered payments.

An exempt SPM account generally refers to an account that is outside the Commonwealth's Official Public Account Group and not subject to the Commonwealth's sweeping arrangements. These accounts would normally be established to hold genuine trust monies.

#### **11.1.1.2 *It is recommended that a separate bank account be opened and maintained for each different type of SPM.***

### 11.2 Opening and closing Official bank accounts

#### *Commissioner's Instruction*

#### **11.2.1 Bank accounts may be opened or closed only by Officials with the specific delegated authority from the Commissioner to take such actions.**

#### *Commissioner's Rules*

#### **11.2.1.1 *Officials delegated the power to open and maintain Official bank accounts are to observe the following directions:***

- (a) For bank accounts opened in Australia - include in the title the most appropriate phrase from the following: Official Departmental; Official Administered Payments; Official Administered Receipts; Official SPM Account or Official Exempt SPM Account (SPM refers to Special Public Monies). The delegate is also required to promptly notify the Reserve Bank of the opening and closing of all bank accounts.***
- (b) For bank accounts opened outside Australia - include the word 'Official' in the title. Where the agreement with the bank provides for payment of interest and charging of fees, that the bank only charges standard fees and charges and that the rate of interest paid equal to or higher than the general business rate. The delegate must also maintain a register of all bank accounts operated by the AFP including the account name, account number, bank, branch, signatories***

***and purpose. Finally, the delegate must review all accounts annually and be satisfied as to the ongoing need to maintain each account.***

Guidance:

These requirements are contained and fully explained in Schedule 1, Part 4, Division 2 (Australian based bank accounts) and Schedule 1, Part 6, Division 2 (bank accounts outside Australia) of the Financial Management and Accountability (Finance Minister to Chief Executives) Delegation 2009.

**11.2.1.3** ***When it is not practicable to open an Official bank account with the AFP's transactional banker, it should be established with a bank offering the best alternative service having regard to terms, convenience and facilities available. When such circumstances arise, the advice and approval of the CFO must be obtained.***

Guidance:

Opening an Official bank account with a banker other than the AFP's transactional banker effectively represents entering into an agreement with a bank. Part 3 of Schedule 1 of the Financial Management and Accountability (Finance Minister to Chief Executives) Delegation contains specific Directions to delegates on certain provisions to be included in the agreement.

## **11.3 Special Accounts**

### ***Commissioner's Rules***

**11.3.1.1** ***A separate bank account should be established for monies represented by Special Accounts.***

Guidance:

A Special Account is a 'ledger' account recording the right to draw money from the Consolidated Revenue Fund. If the Special Account has been established under a determination of the Minister for Finance and Deregulation under Section 20 of the FMA Act, that section provides appropriation authority for expenditure up to the balance of the Account (ie a special appropriation). If the Special Account has been established under other legislation similar provisions would exist.

**11.3.1.2** ***A Special Account must only be used in accordance with the purpose clauses contained in the determination. These clauses define the purposes for which amounts may be legally debited from the balance of a particular Special Account and the amounts that may be legally credited to the balance of a Special Account.***

**11.3.1.3** ***All credits and debits against a Special Account must be entered into the AFP SAP system and must also be appropriately reflected in the Central Budget Management System (CBMS).***

## **11.4 Officials' responsibilities**

### ***Commissioner's Rules***

**11.4.1.1** ***Officials who have been delegated the power to open bank accounts must:***

- (a) not open bank accounts in the name of individuals;***
- (b) designate Officials responsible for reconciling Official bank accounts at least monthly;***
- (c) designate Officials, other than themselves, to be signing and countersigning Officers to operate Official bank accounts;***
- (d) issue written instructions to those Officials operating bank accounts; and***

*(e) regularly review the continued need for such Official bank accounts.*

**11.4.1.2** *A minimum of two signatories (signing and counter-signing Officials, both of whom must be eligible Officials) are to operate Official bank accounts. In situations when it is not possible to provide two signatories for an Official bank account eg one-person posts, Coordinator Financial Services should be notified and written approval sought to opening an account with only one signatory.*

Guidance:

It is recommended that several signatories to Official bank accounts should be nominated as signing and counter signing officials. This will avoid delays in issuing cheques in instances where an individual signatory or counter signatory is not available due to leave, illness or other unforeseen circumstances.

**11.4.1.3** *Finance Governance must be advised of the signatories to all bank accounts to enable a drawing right delegation to be approved. Signatories to an account are not permitted to use their signature to withdraw public money from a bank account until they have a valid drawing right delegation.*

**CFI 11 Source References:**

FMA Act sections: 8, 9, 10, 11, 12, 14, 15, 16

FMA Regulations: n/a

## CFI 12 - OFFICIAL ADVANCES

### 12.1 Establishing and closing an Advance Account

#### *Commissioner's Rules*

**12.1.1.1** *Only Officials who have the authority to open bank accounts may establish or close an Official Advance Account.*

**12.1.1.2** *Official Advances can only be established for the following purposes:*

- (a) to provide funding for cheques drawn on an Official Account;*
- (b) to exchange cash denominations; and*
- (c) to make payments of amounts in the nature of operating expenses for the AFP (including temporary Advances).*

**12.1.1.3** *Officials establishing and operating Official Advances are to agree what types of payments are permissible from the Advance, what level of funds should be maintained in the Advance, management arrangements, period of acquittal and duration of any temporary advances.*

**12.1.1.4** *Official Advance accounts are not to be used for banking received money.*

**12.1.1.5** *Petty cash advances are limited to a maximum of \$200 and a minimum of \$5.*

#### *Guidance:*

An Official Advance is used primarily as an efficient and effective alternative mechanism to facilitate the payment of expenses. An Official Advance also covers temporary advances. The use of an Advance should only be considered if the normal method of payment is not suitable or appropriate. A petty cash float (or imprest account) is considered to be an Advance.

Official Advances should only be established using Departmental funds.

Officials who have control and custody of approved Advances are termed 'Advance Holders'.

### 12.2 Officials' responsibilities

#### *Commissioner's Instruction*

**12.2.1** *An Advance Holder must hold a valid Drawing Right delegation in order to make payments from an Advance.*

#### *Commissioner's Rules*

**12.2.1.1** *Advance Holders must not make payments from Official Advance Accounts for any purpose other than for the purpose for which the Advance was established. Advance Holders are not to make payments from Official Advances unless:*

- (a) they have been delegated to perform the functions of an Advance Holder or comply with the temporary provision arrangements on the relevant Delegation Schedule; and*
- (b) payment is consistent with the specific limits and conditions that have been placed upon them in making such payments.*

- 12.2.1.2** *Advance Holders are to maintain records of all transactions relating to the Official Advances for which they are responsible.*
- 12.2.1.3** *The Chief Operating Officer, National Managers, Chief Police Officer for the ACT, Chief Information Officer and Chief Financial Officer are to nominate an Official to perform independent spot checks of public money balances and reconciliations held by each Advance Holder under his/her responsibility at appropriate intervals, not greater than every three months.*
- 12.2.1.4** *The CFO is to designate an Official to maintain a central Register of Advances. This designated Official is responsible for the overall management of Official Advances within the AFP. The duties of the designated Official include:*
- (a) maintaining a register of all Official Advances;*
  - (b) ensuring that Advance Holders are aware of their responsibilities;*
  - (c) ensuring that Official Advances maintained in bank accounts are reconciled at least monthly;*
  - (d) ensuring that cash advances are checked regularly by nominated Officials; and*
  - (e) ensuring that cash advances are being operated correctly.*
- 12.2.1.5** *All Advances must be reconciled monthly.*
- 12.2.1.6** *Copies of reconciliations are to be forwarded to Team Leader, Treasury ([treasury@afp.gov.au](mailto:treasury@afp.gov.au)) within five working days of the end of the month. Details of all spot checks should be forwarded to Team Leader, Treasury as they occur.*

## **12.3 Translation of foreign currency transactions**

### *Commissioner's Rule*

- 12.3.1.1** *Foreign currency transactions are to be recorded in the SAP system using the RBA quoted exchange rate applicable at the date of the transaction.*

## **12.4 Handover/takeover of Public Money**

### *Commissioner's Rule*

- 12.4.1.1** *Whenever an Official takes over or assumes responsibility for an Advance or as a Cashier or National Cashier, either temporarily or permanently, a handover/takeover should be performed. This entails reconciling cash on hand with vouchers to the authorised balance and the completion of an 'Advance Reconciliation or Handover form'. The completed form is to be submitted to the Coordinator, Financial Services.*

#### **Guidance:**

The **'Advance Reconciliation or Handover' Form** is located in Word under AFP Forms.

When the Official to be relieved of duty is not available to take part in these procedures, the relieving Official and one other Official nominated by the Supervisor should reconcile cash on hand with the receipts and complete a certified reconciliation.

#### **CFI 12 Source References:**

FMA Act sections: 8, 9, 10, 11, 12, 14, 15, 26, 27  
 FMA Regulations: n/a

## **CFI 13 - SECURITY OF PUBLIC MONEY**

### **13.1 Officials' responsibilities**

#### *Commissioner's Rules*

**13.1.1.1** *The Chief Operating Officer, National Managers, Chief Police Officer for the ACT, Chief Information Officer and Chief Financial Officer, are responsible for ensuring that:*

- (a) Officials designated with the responsibility for receiving and banking public money are adequately trained and acquainted with their responsibilities under these Instructions and the FMA legislative framework, particularly sections 9 to 12 of the FMA Act; and*
- (b) Officials who have custody of public money operate in a secure environment and that appropriate security is maintained for public money.*

**13.1.1.2** *An Official who is in charge of an Advance Holder should ensure that:*

- (a) Advances are reduced (when necessary) to a level consistent with current needs;*
- (b) adequate facilities are provided to enable the custodian to secure the cash and negotiable securities under their control;*
- (c) the Advance Holder is not located in a remote or isolated area. When this situation cannot be avoided, adequate security precautions must be taken to ensure that the likelihood of theft is minimalised;*
- (d) the custodian is instructed in, and made well aware of, their duties and responsibilities; and*
- (e) security arrangements are reviewed regularly.*

### **13.2 Advance Holders' responsibilities**

#### *Commissioner's Rules*

**13.2.1.1** *The sole custody of cash advances is with Advance Holders, who should ensure adequate security of all public money under their care and custody and who should be the only persons with access to the cash and documents relating to the operation of each individual Advance.*

**13.2.1.2** *Advance Holders should ensure that:*

- (a) cash and negotiable securities held are not visible to, or accessible by, the public;*
- (b) excess cash and negotiable securities are removed periodically from counters or other areas where monies are received from the public, and held in some other secure area pending banking;*
- (c) money not immediately required is retained in a locked safe or, if possible, in a safety deposit box; and*
- (d) when an office is unattended all cash is secured and when the office can be locked, it is so secured.*

s37(2)(b)

**CFI 13 Source References:**

FMA Act sections: 10, 11, 12, 14, 15, 40

FMA Regulations: n/a

## CFI 14 - CHEQUES

### 14.1 Officials' responsibilities

#### *Commissioner's Rules*

- 14.1.1.1** *Undelivered cheques are to be held in safe custody at all times.*
- 14.1.1.2** *Blank cheques stationery must be stored securely.*
- 14.1.1.3** *Action to stop payment on a cheque must be taken immediately in the following circumstances:*
- (a) when a payee advises that a cheque has not been received and it is overdue;*
  - (b) when, after receiving a cheque, a payee advises that it has subsequently been lost, stolen or destroyed; or*
  - (c) when a person, other than the bank on which the cheque was drawn (eg a trader), has cashed the cheque for the payee and it has subsequently been lost, stolen or destroyed.*
- 14.1.1.4** *If an original cheque has been returned, and no replacement has yet been issued, then a replacement cheque must be issued promptly.*

#### **CFI 14 Source References:**

FMA Act sections: 10, 11, 12, 14, 15

FMA Regulations: n/a

## CFI 15 - LOSS OR DEFICIENCY OF PUBLIC MONEY

### 15.1 Officials' responsibilities

#### Commissioner's Instructions

- 15.1.1 If a loss of public money occurs and at the time of the loss, an Official or Minister had nominal custody of the money, the Official is liable to pay to the Commonwealth an amount equal to the loss. However, it is a defence if the Official proves that they took reasonable steps in all the circumstances to prevent the loss (subsection 15(1) of the FMA Act).
- 15.1.2 If a loss of public money occurs and an Official caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care, the Official is liable to pay to the Commonwealth an amount equal to the loss. However, if the person's misconduct or disregard was not the sole cause of the loss, the person is liable to pay only so much of the loss as is just and equitable having regard to the person's share of the responsibility for the loss (subsection 15(3) of the FMA Act).

### 15.2 Processes to be followed in the event of a Loss or Deficiency of Public Money

#### Commissioner's Rule

- 15.2.1.1 *Officials must comply with the processes in the **National Guideline on Loss of Public Money or Property.***

#### CFI 15 Source References:

FMA Act sections: 14, 15  
FMA Regulations: 19, 20

# **COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)**

## **PART 5**

### **CUSTODY, CONTROL AND MANAGEMENT OF PUBLIC PROPERTY**

## Overview of Part 5 – Care, Custody and Management of Public Property

All Officials come into contact with public property in one form or another. As a result, all Officials have a duty of care with regard to public property and have a responsibility to ensure its proper use and custody.

This Part also includes Instructions and Rules in respect to debts owed to the AFP and debt management.

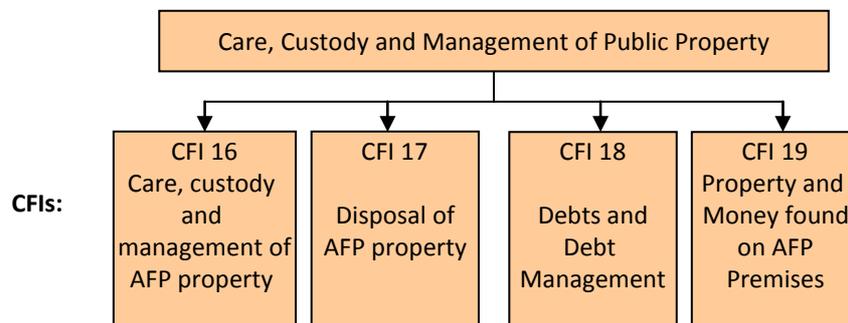
**Definition:**

'Public property' is defined in section 5 of the FMA Act as:

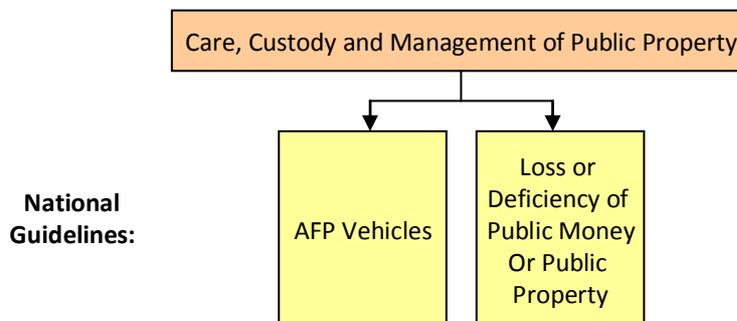
- (a) property in the custody or under the control of the Commonwealth; or
- (b) property in the custody or control of any person acting for, or on behalf of the Commonwealth in respect of the custody or control of the property, including any such property that is held on trust for, or otherwise for the benefit of, a person other than the Commonwealth.

### Structure of Part 5

The Commissioner's Instructions contained in Part 5 are structured as follows:



Supporting National Guidelines include:



## CFI 16 - CUSTODY, CARE AND MANAGEMENT OF AFP PROPERTY

### 16.1 Officials' responsibilities

#### Commissioner's Instructions

- 16.1.1 Officials must not misapply public property or improperly dispose of, or improperly use public property.
- 16.1.2 Officials must manage public property in a way that promotes proper use of Commonwealth resources.

#### Definition:

Proper use means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth.

#### Commissioner's Rules

- 16.1.1.1 All assets, portable and attractive items and inventory must be properly managed and accounted for.
- 16.1.1.2 All AFP vehicles must be used and managed in accordance with the **AFP National Guideline on AFP Vehicles**.

### 16.2 Loss of Public Property

#### Commissioner's Instructions

- 16.1.1 If a loss of public property occurs and at the time of the loss, an Official had nominal custody of the property, the Official is liable to pay to the Commonwealth an amount equal to the loss. However, it is a defence if the Official proves that they took reasonable steps in all the circumstances to prevent the loss.
- 16.1.2 If a loss of public property occurs and an Official caused or contributed to the loss by misconduct, or by a deliberate or serious disregard of reasonable standards of care, the Official is liable to pay to the Commonwealth an amount equal to the loss. However, if the person's misconduct or disregard was not the sole cause of the loss, the person is liable to pay only so much of the loss as is just and equitable having regard to the person's share of the responsibility for the loss.

#### Definition

Loss is a financial concept and means the value lost in the event of destruction or damage to property.

### 16.3 Processes to be followed in the event of a Loss or Deficiency of Public Property

#### Commissioner's Rule

- 16.3.1.1 Officials must comply with the processes in the **National Guideline on Loss of Public Money or Property**.

**CFI 16 Source References:**

FMA Act sections: 40, 41, 42, 43

FMA Regulations: n/a

## CFI 17 - DISPOSAL OF AFP PROPERTY

### 17.1 Officials' responsibilities

#### *Commissioner's Rules*

- 17.1.1.1** *Only Officials with delegated authority can approve the disposal of AFP property.*
- 17.1.1.2** *Officials authorised to approve the disposal of AFP property which has become surplus, obsolete or unserviceable are to:*
- (a) ensure that the disposal of property obtains the best net outcome for the Commonwealth;*
  - (b) be satisfied that the disposal of AFP property is able to withstand public scrutiny in terms of value for money, probity and ethical grounds;*
  - (c) ensure that, in the interests of promoting probity, fair dealing and openness, the AFP will not sell surplus AFP assets directly to staff outside a publicly competitive process;*
  - (d) refer proposals to dispose of AFP property which could be of cultural or historical significance to the Commonwealth Department of the Environment, Water, Heritage and the Arts prior to any action being taken;*
  - (e) ensure adequate documentation is retained of any disposals arranged;*
  - (f) pass any proceeds received directly, to a Cashier on the day of receipt or, if not practicable, on the next working day; and*
  - (g) ensure the National Asset Register reflects the disposal of any AFP property.*

#### **CFI 17 Source References:**

FMA Act sections: 41, 42, 43

FMA Regulations: n/a

## CFI 18 - DEBTS OWING TO THE AFP AND DEBT MANAGEMENT

### 18.1 Official's Responsibilities

#### Commissioners Instruction

##### 18.1.1 Officials must manage debts in a manner that promotes the proper use of Commonwealth resources.

#### Commentary:

A debt represents the property of the AFP. The FMA Act places an obligation on the Commissioner to manage the affairs of the AFP in a way that promotes the proper use of Commonwealth resources. Proper use means efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth.

The FMA Act does not define debt and in the absence of a definition the term 'debt' should be interpreted in its ordinary sense. It is generally accepted that a debt is something owed (especially money) and there is a state of obligation to pay something.

### 18.2 Establishing a debt

#### Commissioner's Rule

##### 18.2.1.1 *Prior to commencing recovery of an amount owing, Officials must establish that a debt exists.*

#### Commentary

There is a legal distinction between the terms 'amount owing' and 'debt' in the context of s. 34 and s.47 of the FMA Act. Until such time as an 'amount owing' is completely defined as to quantum and legally established as a debt, it is not recoverable. Legal establishment of a debt would occur:

- With reference to a contract or agreement and evidence of the delivery of goods or services in accordance with the terms of the contract;
- A legal remedy under a contract;
- A court judgement; or
- Statutory entitlements under legislation.

Legal establishment can also occur via written acknowledgement from the person or organisation owing the money – this would be normally be the case where money is owed by an AFP employee.

Advice should be sought from Manager, Legal in relation to the definition of a debt in cases where the circumstances and/or liability are not clearly defined.

### 18.3 Reporting and Recording debts

#### Commissioner's Rules

##### 18.3.1.1 *Officials must advise Shared Services Centre (SSC) of the existence of all debts.*

##### 18.3.1.2 *The Shared Services Centre must record all debts in the AFP's financial information management system.*

**18.3.1.3** *Officials are required to assess all receivables for objective evidence of impairment on a quarterly basis, and report all outstanding debts as well as an allowance for doubtful debts in the AFP's financial statements.*

Guidance:

Officials should contact the AFP Financial Reporting Team about the processes and procedures to be implemented in respect to assessing impairment.

## **18.4 Recovery of Debts**

### **Commissioner's Instructions**

**18.4.1** **Officials are required to pursue all debts unless:**

- (a) the debt has been written off as authorised by an Act; or
- (b) the Commissioner (or his delegate) is satisfied that the debt is not legally recoverable; or
- (c) the Commissioner (or his delegate) considers that it is not economical to pursue recovery of the debt.

**18.4.2** **Amounts owing should normally be paid in full immediately on the due date. However, an authorised delegate may approve the payment of the debt by instalments or in full at a deferred date. The following must be in place before a debt can be paid by instalments or deferred until a future date:**

- (a) Evidence of hardship;
- (b) Imposition of conditions on payments in order to recover the debt as soon as reasonably practicable;
- (c) Charging of interest on the monies owing;
- (d) Provision of certain information to the debtor; and
- (e) The acceptance of provisions for the payment of a debt by the debtor.

Guidance:

The delegate must require the debtor to provide evidence (by statutory declaration or other means) sufficient to satisfy the delegate that it would be unreasonable to require the debtor to discharge the debt other than in instalments or at a deferred date.

When allowing payment by instalments, the delegate must impose conditions on such payment with the object of ensuring that the Commonwealth recovers the amount as soon as is reasonably practicable, having regard to the debtor's ability to repay.

The delegate must ordinarily impose interest at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points; not impose interest at a higher rate than the 90 day bank-accepted bill rate less 10 basis points; and if a lesser rate of interest, or no interest, is imposed, record in writing the reasons.

The following information is to be given to the debtor in writing:

- (a) amount owing to the Commonwealth;
- (b) date or dates when payment is due;
- (c) interest rate (if any);
- (d) any other matter the delegate considers relevant, taking into account the evidence of hardship;
- (e) conditions of acceptance by the debtor (refer 40.7, below); and
- (f) a requirement for the debtor to confirm, in writing, acceptance of the above matters.

The debtor must accept the provisions for repayment in writing.

Finally, the delegate may, at any time, review, and if necessary revise, the arrangements to determine whether different conditions should be imposed, taking into account the debtor's ability to pay. As a general guide, debt repayment or deferral arrangements should be reviewed at least annually.

### **Commissioner's Rules**

- 18.4.1.1** *In the event that the amount of salary or allowance is determined to be an overpayment, a debit note should be issued to the Official, who should also be advised that the amount is to be paid in full within 28 days from the date of issue of the debit note.*
- 18.4.1.2** *When negotiating repayment of salaries or allowances by instalments, the amount of instalments should not be less than 5% of the Official's gross fortnightly salary. The Coordinator, Financial Services must be consulted if the proposed instalments are to be less than 5% of the official's gross fortnightly salary.*
- 18.4.1.3** *When an Official leaves the AFP, the amount of any recoverable overpayments must be deducted from any monies, except superannuation money, owing to the Official at the time of termination.*
- 18.4.1.4** *Where a debt has been clearly established but the debtor fails, or refuses to pay an amount outstanding to the AFP, the relevant delegate should make a decision in consultation with Manager, Legal in relation to pursuing the debt and recovering all outstanding money.*

## **18.5 Non-recovery of Debts**

### **Commissioner's Instruction**

- 18.5.1** **Officials have the responsibility to recover debts within their management area of responsibility unless:**
- (a) the debt has been written off as authorised by an Act; or**
  - (b) a delegate is satisfied that the debt is not legally recoverable; or**
  - (c) a delegate considers that it is not economical to pursue recovery of the debt.**

#### **Guidance:**

Approval of non-recovery of a debt does not expunge the debt by law and only defers recovery of the debt which could be pursued at a later date should the circumstances which led to the deferral change eg the debtor's financial circumstances improve. Should circumstances change, recovery of the debt should be pursued.

Delegates may approve non-recovery of a debt on the basis that after all reasonable action has been taken the debt is not recoverable. The debt is then deemed to be irrecoverable. In other instances, a delegate might make a judgement that a debt is not recoverable legally on the basis that if the matter went to court, the court would be likely to determine in favour of the debtor and rule that the debtor was not liable for the debt. Advice should be sought from Manager, Legal in this regard.

When, in a delegate's judgement, the recovery of a debt would leave the Commonwealth financially worse off than it would have been had recovery not been undertaken the debt could be regarded as uneconomical to pursue and written-off.

An amount owed by a bankrupt or company in liquidation should not be formally regarded as irrecoverable until:

- the bankrupt has been discharged from bankruptcy, or the liquidation of the company has been finalised; or
- advice of the extent of the likely distribution of funds has been received from an Official Receiver or Trustee in Bankruptcy or from a Liquidator in winding up of a company.

While awaiting the discharge of bankrupts or the wind-up of companies, the debt should be regarded as a doubtful debt and only the amount for which there is a reasonable chance of recovery should be disclosed as a receivable in financial statements.

**CFI 18 Source References:**

FMA Act sections: 47

FMA Regulations: n/a

## CFI 19 - PROPERTY AND MONEY FOUND ON AFP PREMISES

### 19.1 Property found on AFP premises

#### *Commissioner's Rules*

- 19.1.1.1** *When any miscellaneous property is found by a person on AFP premises and reported to an Official, that Official should direct the person to the nearest State or Territory Police Station. In the ACT this will be the AFP who provides policing services to the Government of the Australian Capital Territory.*
- 19.1.1.2** *An Official finding property in the AFP's ACT premises must pass the property to the Property Office on the day that the property is found, or, if not practicable, on the next working day.*
- 19.1.1.3** *Officials within the AFP ACT Property Office must:*
- (a) maintain a property register for property found on AFP premises;*
  - (b) issue a receipt to the finder;*
  - (c) ensure the safe custody of the property;*
  - (d) make every reasonable effort to trace the owner and return the property to them; and*
  - (e) if necessary, dispose of the property in accordance with FMA Regulation 23.*

#### *Guidance:*

FMA Regulation 23 sets out the requirements for claiming of public property found on Commonwealth premises and the disposal of property not claimed.

### 19.2 Money found on AFP premises

#### *Commissioner's Rules*

- 19.2.1.1** *When any money is found by a person on AFP premises and reported to an Official, that Official should direct the person to the nearest State or Territory Police Station. In the ACT this will be the AFP who provides policing services to the Government of the Australian Capital Territory.*
- 19.2.1.2** *An Official finding money in the AFP's ACT premises must pass the money to the National Cashier on the day that the money is found, or, if not practicable, as soon as possible thereafter.*
- 19.2.1.3** *A Cashier, on receiving money that has been found on AFP Premises, must:*
- (a) maintain a register for money found on AFP premises;*
  - (b) issue a receipt to the finder; and*
  - (c) deposit the money in an Official Account.*
- 19.2.1.4** *Officials must make every reasonable effort to trace the owner and return the money to them.*

**19.2.1.5** *If the money is claimed within three months of being found, it should be returned to the legal owner.*

**19.2.1.6** *If the money is not claimed by the legal owner within three months of it being found, and the finder claims the money, it should be paid to the finder at the end of four months.*

**CFI 19 Source References:**

FMA Act sections: n/a

FMA Regulations: 23

# COMMISSIONER'S FINANCIAL INSTRUCTIONS (CFIs)

## PART 6

## OTHER

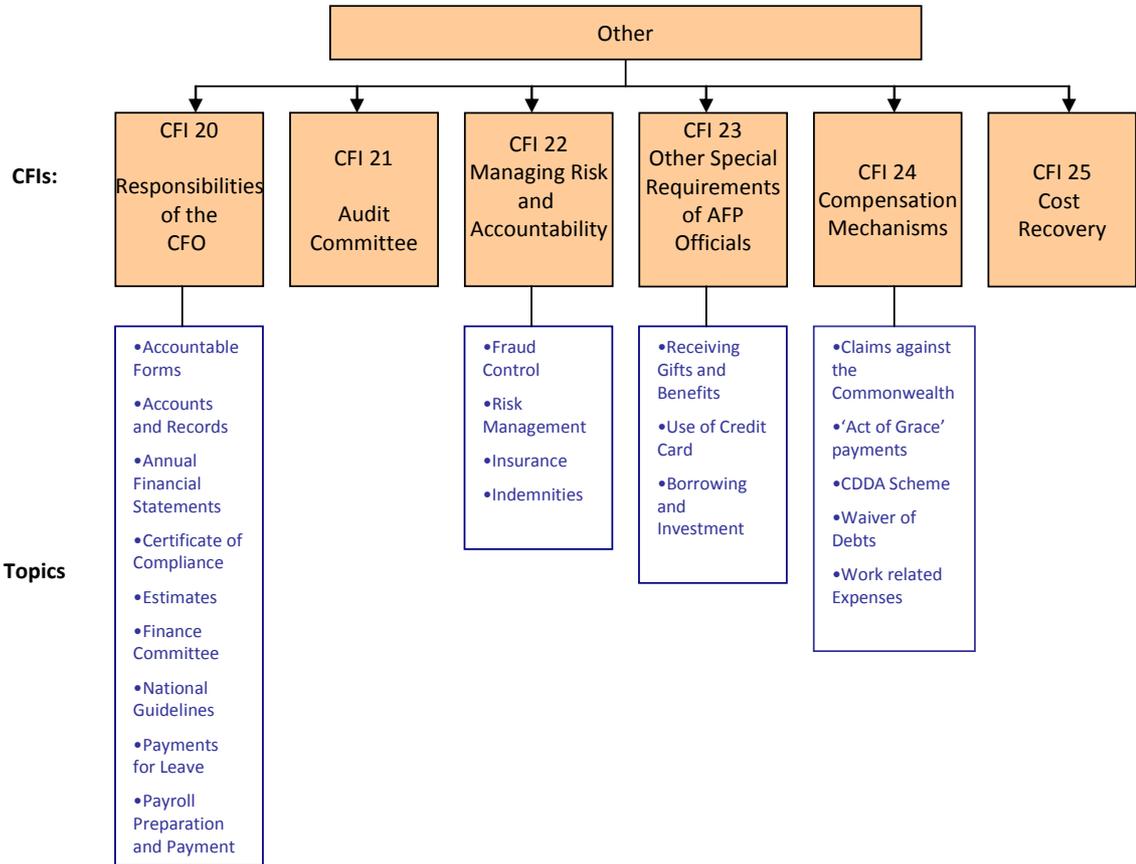
# Overview of Part 6 – Other

This Part contains the remainder of the Commissioner’s Instructions. The Instructions fall into four broad categories as follows:

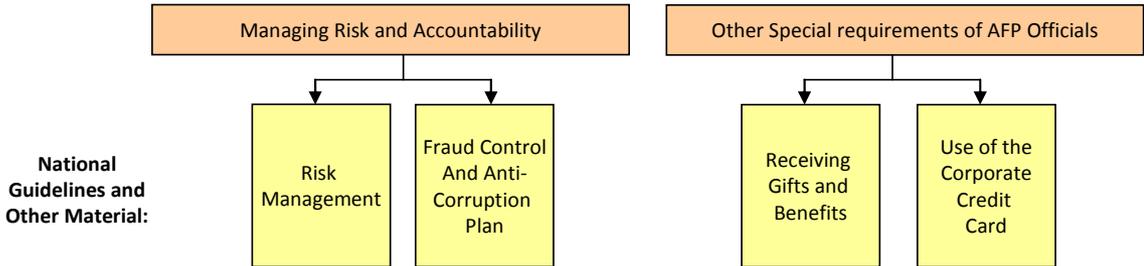
- Corporate Finance Governance requirements – CFIs 19 to 21;
- Other Special requirements for AFP Officials – CFI 22;
- Compensation mechanisms – CFI 23;
- Archiving accounts and records – CFI 24; and
- Cost recovery – CFI 25.

## Structure of Part 6

The Commissioner’s Instructions contained in Part 6 are structured as follows:



Supporting National Guidelines and other material include:



## CFI 20 - RESPONSIBILITIES OF THE CHIEF FINANCIAL OFFICER

### 20.1 Accounts and Records

#### Commissioner's Instruction

- 20.1.1** The Chief Financial Officer is responsible for ensuring that the AFP's accounts and records are kept in a manner that enables the AFP to comply with the requirements of the FMA framework and any instructions/requests from the Minister for Finance and Deregulation.

#### Commissioner's Rule

- 20.1.1.1** *The Chief Financial Officer must ensure the AFP's accounts and records properly record and explain all transactions and balances. The accounts and records are to be kept in a way that:*
- (a) records the receipt and expenditure of public money on a daily basis;*
  - (b) enables information to be provided to the Chief Executive of the Department of Finance and Deregulation when required by the Chief Executive of the Department of Finance and Deregulation:*
    - i) on Commonwealth financial affairs to be included in budget and related documentation;*
    - ii) on the financial affairs of the AFP for the preparation of aggregate reporting for the Commonwealth;*
  - (c) properly records the transactions relating to all forms of special public monies and Special Accounts;*
  - (d) enables the preparation of financial statements in accordance with section 49 of the FMA Act;*
  - (e) allows those financial statements to be conveniently and properly audited in accordance with the FMA Act;*
  - (f) ensures that monies are only expended for the purpose for which they are appropriated; and*
  - (g) ensures the limit on any appropriation is not exceeded.*

### 20.2 Annual Financial Statements

#### Commissioner's Rule

- 20.2.1.1** *The Chief Financial Officer is responsible for the preparation of the AFP's annual financial statements that comply with the Finance Minister's Orders.*

### 20.3 Certificate of Compliance

#### Commissioner's Rule

- 20.3.1.1** *The Chief Financial Officer is responsible for managing the Certificate of Compliance process and ensuring that the AFP provides a completed Certificate of Compliance to the Portfolio Minister. Copies are to be forwarded to the Minister for Home Affairs and*

*Justice and to the Minister for Finance and Deregulation by the due date set by the Department of Finance and Deregulation.*

## **20.4 Estimates**

### *Commissioner's Rule*

**20.4.1.1** *The Chief Financial Officer is responsible for the preparation of estimates as directed by the Department of Finance and Deregulation (DoFD).*

## **20.5 Finance Committee**

### *Commissioner's Rule*

**20.5.1.1** *The Chief Financial Officer is responsible for the establishment and management of the AFP's Finance Committee Secretariat.*

## **20.6 National Guidelines**

### *Commissioner's Rule*

**20.6.1.1** *The Chief Financial Officer is responsible for the creation and ongoing maintenance of National Guidelines covering the following topics:*

- *Asset Management*
- *Fringe Benefits Tax (FBT)*
- *Corporate Credit Card*
- *Hospitality and Entertainment*
- *Offering Gifts*
- *Receiving Gifts*
- *Representation*
- *Use of AFP vehicles*
- *Procurement and Contracts*
- *Grants and Grant Management*
- *Loss or deficiency of Public Money or Property*

## **20.7 Payments for Leave**

### *Commissioner's Rule*

**20.7.1.1** *Where Officials permanently transfer to another Commonwealth agency or Commonwealth Authority and the transferee agency renders a correct invoice for the leave entitlements, the Chief Financial Officer must ensure that payment is made within 30 days.*

#### **Guidance:**

The FMA Regulations require that a calculated value representing an Official's leave entitlements must be paid to the transferee Commonwealth agency or Authority. For short term transfers, the agencies/authority involved may agree not to issue an invoice where it is not efficient to do so provided the Official is not deprived of access to leave entitlements.

## **20.8 Payroll Preparation and Payment**

### *Commissioner's Rule*

**20.8.1.1** *The Chief Financial Officer is responsible for payroll operations of the AFP and is required to:*

- (a) issue directions and procedural instructions as required to Officials involved in payroll processing;*
- (b) establish appropriate internal control systems to ensure that only accurate and valid data forms the basis of the AFP's payroll preparation;*
- (c) ensure that any amounts owed by an Official leaving the AFP are deducted from his/her final payment and are paid to the Commonwealth; and*
- (d) nominate Officials to perform each of the following functions:*
  - implementation of special arrangements to cover payments in advance and payments after the normal payroll cut-off times;*
  - verification of payroll output documentation to ensure accuracy of salaries processing and entries on payroll advices, prior to the payday to which the output documentation relates; and*
  - prompt reconciliation (ie prior to pay day) of source documentation and payee records.*

## CFI 21 - AUDIT COMMITTEE

### 21.1 Officials' responsibilities

#### *Commissioner's Rules*

**21.1.1.1** *The Chief Operating Officer is responsible for the establishment, Terms of Reference and operation of the internal audit function within the AFP.*

*The functions and responsibilities of the Audit Committee are to include the:*

- (a) approval of internal annual and strategic audit plans for the AFP;*
- (b) review of all audit reports involving matters of concern to the Executive of the AFP, including the identification and dissemination of good practices;*
- (c) provision of advice to the Commissioner on action to be taken on matters of concern raised in a report of the Internal Auditors or in a report by the Auditor-General;*
- (d) coordination of audit programs conducted by Internal Auditors and, as far practicable, programs conducted by the Auditor-General; and*
- (e) provision of advice to the Commissioner on the preparation and review of financial statements.*

*The terms of reference for an Audit Committee, established under s. 46 of the FMA Act, must include:*

- (a) particulars of membership;*
- (b) frequency of meetings;*
- (c) functions; and*
- (d) responsibilities of the Committee.*

**21.1.1.2** *It is the responsibility of the Audit Committee to monitor the internal control framework of the AFP.*

#### *Discussion:*

Under s. 46 of the FMA Act, the Commissioner is required to establish and maintain an AFP Audit Committee, with the functions and responsibilities as set out in the FMA Act and Regulations. Membership of the Audit Committee is to be determined by the Commissioner.

#### **CFI 21 Source References:**

FMA Act sections: 45, 46  
FMA Regulations: 19, 20

## CFI 22 - MANAGING RISK AND ACCOUNTABILITY

### 22.1 Commonwealth Fraud Control Guidelines

#### Commissioner's Instructions

- 22.1.1 National Managers are required to comply with the AFP's Fraud Control and Anti-Corruption Plan 2009-11 and manage fraud related risks in accordance with the Plan.**
- 22.1.2 Any Official who becomes aware of, or suspects that a fraud has been carried out against the AFP by an Official or any other person, must report the matter immediately to the Manager Professional Standards.**

#### Discussion:

Section 45 of the FMA Act requires Chief Executives to implement a fraud control plan for their agency. This requirement is supported by the *Commonwealth Fraud Control Guidelines* which require the implementation of practices and procedures for effective fraud control. The *Fraud Control Guidelines* also provide directions on the processes relevant to fraud investigations, case referrals (including to the Commonwealth Director of Public Prosecutions) and prosecution.

### 22.2 Risk management within the AFP

#### Commissioner's Instructions

- 22.2.1 The Commissioner and Senior Executives lead the AFP in the establishment and maintenance of an effective risk management culture and set expectations in managing risk throughout the AFP.**
- 22.2.2 Policy and Governance is functionally responsible for developing and maintaining the overall AFP Strategic Risk Management Framework including policy guidance and supporting material.**
- 22.2.3 National Managers are required to comply with the AFP National Guideline on Risk Management. The guideline outlines the obligations, policies and procedures for a common approach by all appointees (including contractors and consultants) to managing risks that may impact upon the AFP achieving its objectives.**

### 22.3 Insurance

#### Commissioner's Rules

- 22.3.1.1 *National Managers are responsible for minimising the AFP's risk and exposure to loss or damage to property or injury to people. National Managers must give consideration to whether the risks to public money or public property within their responsibility represent an insurable risk.***

#### Definition:

Insurable risks are those risks where insurance can be accessed to mitigate the financial consequences of the risk occurring (for example, theft and damage to property where the property is replaceable). Non-insurable risks are risks where insurance does not offer any mitigation of the risks, as the consequences are often non financial (for example, not achieving organisational objectives resulting in a diminished reputation).

Guidance:

Insurance services are provided to the AFP by Comcover. Comcover is the Commonwealth's self managed fund for insurable risks to meet property losses, common law liabilities and other commercially insurable losses. Specific classes of insurance provided to the AFP are:

- General Liability and Professional Indemnity;
- Directors' and Officers' Liability;
- Property Loss, Destruction or Damage;
- Business Interruption and Consequential Loss;
- Motor Vehicle Loss, Destruction or Damage;
- Overseas Travel Insurance; and
- Personal Accident Insurance for other than AFP employees

Where, either for operational or commercial reasons, the risks to public property or public money cannot be covered by the AFP's Comcover insurance, Officials should consider taking out relevant commercial insurance.

**22.3.1.2** *Officials intending to engage consultants or contractors, appoint secondees or sponsor work experience personnel or volunteers must determine the levels and conditions of insurance carried by those persons or their employers. In the event that the insurance coverage relative to the risk profile is inadequate, Officials must either:*

- *Require the person or their employer to increase insurance coverage; or*
- *Arrange appropriate insurance coverage through Comcover.*

Guidance:

For further guidance contact the National Procurement and Contracts Team.

## **22.4 Indemnities**

### *Commissioner's Rules*

**22.4.1.1** *National Managers should ensure that all indemnities are to be negotiated with the AFP's interest being the prime consideration ie as far as practicable and the AFP's exposure to potential financial liability should be minimised.*

**22.4.1.2** *Should the indemnity or contingent liability expose the AFP to a potential significant uninsurable risk, advice should be sought from AFP Legal and the CFO prior to undertaking a commitment to provide such an indemnity.*

**22.4.1.3** *Before entering into an indemnity or arrangement that may give rise to a contingent liability (being a liability exposure for the AFP with a greater than 5% chance of occurring or involving AFP expenditure of more than \$5,000,000 should the liability exposure materialize), Officials must seek advice from AFP Legal and also refer the details to the Finance Governance team.*

Guidance:

In entering into agreements and contracts that contain indemnities or raise contingent liabilities authorised Officials should have regard to the financial and operational risk to the organisation and attempt to negotiate any indemnities or contingent liabilities in normal commercial terms.

Indemnity arrangements should contain:

- a financial limit; and
- specification of events or periods covered by the indemnity, and/or termination clauses, otherwise the indemnity should be subject to periodic review.

**CFI 22 Source References:**

FMA Act sections: 45, 46

FMA Regulations: 19, 20

## CFI 23 - OTHER SPECIAL REQUIREMENTS FOR AFP OFFICIALS

### 23.1 Receiving Gifts and Benefits

#### *Commissioner's Rule*

23.1.1.1 Officials must comply with the **National Guideline on Receiving Gifts and Benefits.**

### 23.2 Use of the AFP Corporate Credit Card

#### *Commissioner's Rule*

23.2.1.1 Officials issued with an AFP Corporate Credit Card must comply with the **National Guideline on the use of the Corporate Credit Card.**

### 23.3 Borrowing and Investment

#### *Commissioner's Instructions*

23.3.1 AFP Officials are prohibited from borrowing money on behalf of the Commonwealth.

23.3.2 AFP Officials are prohibited from investing public money.

### 3.4 Accountable Documents and Forms

#### *Commissioner's Rule*

23.4.1.1 Officials entrusted with accountable documents or forms must ensure their safe custody at all times.

## CFI 24 - COMPENSATION MECHANISMS

### 24.1 Claims against the Commonwealth

#### *Commissioner's Rules*

- 24.1.1.1** *An Official involved in an incident occurring in the course of their employment with the AFP, including an accident involving an AFP vehicle (or rental vehicle), whereby a civil claim or criminal proceedings against them and/or the Commonwealth may arise, must immediately report the matter to their Supervisor who, in turn, should report it to Manager, Legal. If the incident involves an AFP vehicle the Supervisor should also forward a copy of the report to the National Fleet Manager.*
- 24.1.1.2** *All claims against the Commonwealth received by any Official must, in the first instance, be referred to that Official's immediate Supervisor who, in turn, must refer the claim to Manager, Legal for advice in relation to the handling of the claim. A Comcover Incident Notification Form will generally be required to be completed by the Official.*
- 24.1.1.3** *A register of all claims received is to be maintained by Manager, Legal.*
- 24.1.1.4** *Settlement of a claim requires the existence of at least a meaningful prospect of liability being established against the Commonwealth. A settlement should not be effected merely because of the cost of defending a claim. If there is a meaningful prospect of liability, the factors to be taken into account in assessing a fair settlement amount should include:*
- (a) the prospects of the claim succeeding in court;*
  - (b) the costs of continuing to defend the claim; and*
  - (c) any prejudice to government in continuing to defend the claim (eg a risk of disclosing confidential government information).*
- 24.1.1.5** *Settlements for amounts not exceeding \$10,000 may be approved by the Commissioner or his delegate on receipt of advice from Manager, Legal and with the signing of relevant release or settlement documents by the claimant.*
- 24.1.1.6** *Claims which can not be settled for \$25,000 or less are to be treated as 'major claims'. Major claims may only be settled if:*
- (a) written advice is received from the Australian Government Solicitor (AGS) or other legal adviser external to the AFP that the settlement is in accordance with legal principle and practice; and*
  - (b) the Commissioner or his authorised delegate agrees with the quantum and terms of the settlement.*
- 24.1.1.7** *If a claim raises exceptional circumstances which justify a departure from the normal mechanism for settling a claim, it should be referred to Manager, Legal who, in turn, is to refer the matter to the Office of Legal Services Coordination (OLSC). This may result in the Attorney-General or his delegate permitting a departure from the normal policy with or without the imposition of different or additional conditions.*
- 24.1.1.8** *A condition of any settlement is that the claimant be required to sign a suitable release and, where appropriate, an indemnity against claims by third parties that could arise*

*from the event which gave rise to the settlement. The drafting of settlement documents and releases must be arranged through Manager, Legal.*

## **24.2 'Act of Grace' Payments**

### **Commissioner's Rules**

- 24.2.1.1** *An Official who receives a request for an 'Act of Grace' payment must, in the first instance, refer the matter to Manager, Legal, who should provide advice to the CFO in relation to the Commonwealth's liability and the processes to be followed in accordance with the FMA Act s. 33 and Finance Circular 2009/09 – Discretionary Compensation and Waiver of Debt Mechanisms.*
- 24.2.1.2** *Following receipt of such advice from Manager, Legal, the CFO may forward the request to the Branch Manager, Special Finance Claims Section, Department of Finance and Deregulation, for approval under s. 33 of the FMA Act.*
- 24.2.1.3** *The CFO must ensure that:*
- (a) a suitable register is maintained of 'Act of Grace' payments approved during a financial year;*
  - (b) 'Act of Grace' payments are only made from money appropriated by the Parliament for the purposes of s. 33(1) of the FMA Act; and*
  - (c) 'Act of Grace' payments made during each financial year are reported in the AFP annual financial statements.*

#### **Guidance:**

The 'Act of Grace' powers under section 33 of the FMA Act allows the Finance Minister and his delegates to authorise one-off and periodic payments to individuals or other bodies (such as companies) in special circumstances. The Commissioner does not have this power.

## **24.3 Compensation for Detriment caused by Defective Administration (CDDA Scheme)**

### **Commissioner's Rules**

- 24.3.1.1** *All claims under the CDDA Scheme are to be referred to the CFO via Coordinator Financial Services by the Manager of the relevant area.*
- 24.3.1.2** *The CFO is then responsible for referring the matter to Manager, Legal for advice and for initially registering the claim in a register of CDDA claims.*
- 24.3.1.3** *If a claim is received externally to the AFP by a Minister and referred to the AFP, the referring Minister or Department should be advised of the outcome.*
- 24.3.1.4** *All claims for compensation under the CDDA Scheme not exceeding \$25,000 need to be approved or rejected by the Commissioner. When a claim exceeds \$25,000, the relevant approver is the responsible departmental Minister.*
- 24.3.1.5** *In all cases when compensation under the CDDA Scheme is to be recommended for approval, the CFO must ensure that:*
- (a) a Deed of Release (and Indemnity when appropriate) is prepared by Legal;*
  - (b) the claim for payment is authorised by the relevant delegate (the Commissioner or the Minister for Home Affairs, depending on the size of the claim);*

- (c) the Deed of Release (and Indemnity when appropriate) is signed by the claimant prior to the payment being authorised;**
- (d) the amount paid to the claimant under the CDDA Scheme is recorded in the CDDA Register; and**
- (e) the amounts paid out under the Scheme during each financial year are reported in the AFP annual financial statements in accordance with Finance Minister's Orders for Financial Reporting.**

**Discussion:**

Compensation for Detriment Caused by Defective Administration (the CDDA Scheme) is an administrative scheme, established in October 1995, to enable Commonwealth agencies to compensate persons who have been adversely affected by the 'defective' action or inaction of an agency, but who have no other legal avenues through which to seek redress.

Payments can be approved under the Scheme when the relevant approver forms an opinion that an Official within the AFP, who was acting or purporting to act, in the course of their duty, has directly caused a claimant to suffer detriment by virtue of one of the following reasons:

- (a) a specific and unreasonable lapse in complying with existing administrative procedures;
- (b) an unreasonable failure to institute appropriate administrative procedures;
- (c) giving advice to (or for) a claimant that was, in all the circumstances, incorrect or ambiguous; or
- (d) an unreasonable failure to give to (or for) a claimant, the proper advice that was within the Official's power and knowledge to give (or was reasonably capable of being obtained by the Official to give).

In cases where a claim has been investigated and a recommendation made to reject it, the CFO is to formally make that recommendation to the Commissioner – as the AFP approver – and obtain the Commissioner's approval for rejection of the claim. Following that, the CFO is to formally write to the individual who made the claim to advise them of its rejection, and the grounds on which it was rejected.

## **24.4 Waiver of Debts**

### **Commissioner's Rules**

**24.4.1.1 The CFO is responsible for coordinating requests to waive recovery of debts owing to the Commonwealth.**

**24.4.1.2 The CFO must forward requests for waiver of debts owing to the Branch Manager, Special Claims and Land Policy Branch, Department of Finance and Deregulation (DoFD) for consideration:**

- (a) if it is considered that the request is warranted; or**
- (b) if a debtor has asked that their request is considered by DoFD.**

**24.4.1.3 The CFO must ensure that:**

- (a) a register of amounts waived during a financial year is maintained; and**
- (b) amounts waived during each financial year are reported in the AFP Annual Financial Statements.**

**Guidance:**

Only the Finance Minister has the authority to waive debts under the FMA Act. This power is not delegated to the Commissioner nor to any AFP Officials.

The majority of requests for waiver are in respect of overpayments of salaries and allowances to AFP Officials. A waiver of such overpayments would rarely apply and only in circumstances when recovery would lead to:

- (a) an inequity, eg when it would leave a person worse off than if the overpayment had not occurred – such as an employee who had unwittingly received an overpayment of an allowance and had spent it for that purpose; or
- (b) unreasonable hardship – a genuine and continuing inability to make repayments without the debtor suffering genuine and significant financial hardship.

## **24.5 Work Related Expenses**

### **Commissioner's Rules**

**24.5.1.1 National Managers are responsible for the overall management and control of work related expenses privately incurred by, and reimbursed to, Officials in their organisational area.**

**24.5.1.2 There are two categories of work-related expenses:**

- (a) expenses agreed to be reimbursed on satisfaction of pre-agreed conditions eg under the Professional Development Scheme; and**
- (b) expenses arising from the performance of an Official's duties eg damage to clothing or other personal effects such as watches, glasses etc.**

**24.5.1.3 Officials must have prior approval from their National Manager to incur work related expenses such as 24.5.1.2 (a) above before being reimbursed.**

**24.5.1.4 Approval of expenses arising from the performance of an Official's duties ie damage to personal effects, may be made by the Approver delegate up to a value not exceeding \$250 per claim. The amount claimed must represent the net cost to the Official in replacing the item damaged.**

**24.5.1.5 Each claim must be substantiated by proof of damage and a statutory declaration signed by the Official claiming reimbursement, accompanied by a release from further liability. The Official must state, in a statutory declaration, that the amount claimed represents the net loss ie after any insurance claims.**

**24.5.1.6 SES Band 1 and above may approve reimbursement of semi-official telephone costs incurred by Officials on private phones.**

#### **Guidance:**

When approving reimbursement of a semi-official telephone service the following costs are considered reimbursable:

- (a) installation costs for a new telephone service;
- (b) basic rental charges for a single hand set standard telephone. Members of the Executive may approve the rental of additional handsets and minor additional facilities such as extra points and long cords in exceptional circumstances;
- (c) up to 60 metered units per quarter;
- (d) for overseas calls and up to a specified number of metered calls or message units approved by the National Manager; and
- (e) all official STD calls.

As a general rule, reimbursement of the semi-official phone costs should not be approved where an official has been allocated an AFP phone or AFP has paid for phone credits.

**24.5.1.7 Specific individual Senior Executive Service (SES) Agreements and the 2007 - 2011 Collective Agreement may contradict some aspects of this CFI in relation to work-related expenses. When this occurs, the conditions in specific agreements override the general intention of these Commissioner's Rules.**

## **24.6 Assistance to AFP Officials in respect to Legal Proceedings**

### *Commissioner's Rules*

**24.6.1.1** *Officials seeking assistance in respect to Legal Proceedings must apply to the Manager, Legal.*

**24.6.1.2** *Manager, Legal in considering granting assistance to Officials who are seeking assistance in relation to any type of legal proceedings arising from their employment under s64B of the AFP Act Reference should consult Legal Services Directions Appendix E – Directions on Assistance to Commonwealth Employees for Legal Proceedings.*

## CFI 25 - COST RECOVERY

### 25.1 Officials' responsibilities

#### Commissioner's Instruction

#### 25.1.1 Officials providing goods and/or services to other agencies, bodies or persons external to the AFP must consider whether those goods or services should be charged for in accordance with AFP Regulation 34 Schedule 2 or in accordance with the Australian Government Cost Recovery Guidelines.

##### Guidance:

Under Regulation 34 the AFP may charge a fee for certain police related services. Schedule 2 to the AFP regulations catalogues the services and the amount of the fee.

Under the Commonwealth Cost Recovery Guidelines, the AFP is also required to review its activities and determine whether it should recover the costs of certain activities from the users or those that directly benefit from those activities. Used appropriately, cost recovery can provide an important means of improving the efficiency with which Australian Government products and services are produced and consumed. Charges for goods and services can give an important message to users or their customers about the cost of resources involved. It may also improve equity by ensuring that those who use Australian Government products and services or who create the need for regulation bear the costs. However, cost recovery may not be warranted where:

- it is not cost effective; or
- it would be inconsistent with government policy objectives; or
- it would unduly stifle competition and industry innovation (for example through 'free rider' effects).

### 25.2 Exclusions from cost recovery

##### Guidance:

Many arrangements are not deemed 'cost recovery' for the purposes of the government policy. Key exclusions in relation to potential AFP activities include:

- (a) any form of intra-agency or inter/intra-governmental charging;
- (b) other commercial charging arrangements in competitive or potentially competitive markets that comply with competitive neutrality principles;
- (c) receipts from asset sales, rental of property, royalties, including the sale of rights to access resources;
- (d) fines and pecuniary penalties;
- (e) receipts from one-off specific policy measures that have explicitly been recognised by the government as not being subject to the cost recovery policy – for example where the Australian Government introduces a levy to fund an exceptional policy measure. Ministers must obtain the Finance Minister's agreement where it is proposed to exempt a significant cost recovery arrangement that is new, materially amended or which has been reviewed (as part of the government's review schedule) on the grounds that it is a 'one-off specific policy measure'; and
- (f) charges relating to industry-government partnerships.

When service level agreements or other cost recovery arrangements with State/Territory governments or with other Australian Government agencies are entered into, the Australian Government Cost Recovery Guidelines should be complied with to the greatest possible extent.