

South Australia

Criminal Law Consolidation (General) Regulations 2021

under the *Criminal Law Consolidation Act 1935*

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Schedule 1—Revocation of *Criminal Law Consolidation (General) Regulations 2006*

Legislative history

1—Short title

These regulations may be cited as the *Criminal Law Consolidation (General) Regulations 2021*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations, unless the contrary intention appears—
Act means the *Criminal Law Consolidation Act 1935*.

4—Prescribed occupations and employment—aggravated offences

- (1) For the purposes of section 5AA(1)(ka) of the Act, the following occupations and employment are prescribed:
 - (a) emergency work;

- (b) employment as a person (whether a medical practitioner, nurse, midwife, security officer or otherwise) performing duties in a hospital (including, to avoid doubt, a person providing assistance or services to another person performing duties in a hospital);
- (c) employment as a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine;
- (d) employment as a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area;
- (e) employment as a person designated as an officer of the Department under section 4A of the *Correctional Services Act 1982*;
- (f) passenger transport work;
- (g) police support work;
- (h) employment as a court security officer;
- (i) employment as a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;
- (j) employment as a protective security officer within the meaning of the *Protective Security Act 2007*;
- (k) employment as an inspector within the meaning of the *Animal Welfare Act 1985*.

(2) In this regulation—

accident or emergency department of a hospital means the part of a hospital dedicated to the hospital's major accident and emergency functions, including those areas of the department used for administrative, waiting, reception, storage, diagnostic, treatment, consultation, triage and resuscitation functions and the access bays for ambulance and police;

court security officer means a sheriff, deputy sheriff, sheriff's officer or security officer within the meaning of the *Sheriff's Act 1978*;

emergency means an event that causes or threatens to cause—

- (a) the death of, or injury or other damage to the health of, any person; or
- (b) the destruction of, or damage to, property; or
- (c) a disruption to essential services or to services usually enjoyed by the community; or
- (d) harm to the environment, or to flora or fauna;

emergency services provider means—

- (a) South Australian Country Fire Service; or
- (b) South Australian Metropolitan Fire Service; or
- (c) South Australian State Emergency Service; or

- (d) SA Ambulance Service Inc; or
- (e) St John Ambulance Australia South Australia Incorporated; or
- (f) Surf Life Saving South Australia Incorporated; or
- (g) Royal Flying Doctor Service; or
- (h) Air Sea Rescue Squadron Cowell Incorporated; or
- (i) Australian Volunteer Coast Guard Association Incorporated; or
- (j) Royal Volunteer Coastal Patrol (SA) Incorporated; or
- (k) South Australian Sea Rescue Squadron Incorporated; or
- (l) Victor Harbor-Goolwa Sea Rescue Squadron Incorporated; or
- (m) Whyalla Sea Rescue Squadron Incorporated; or
- (n) the accident or emergency department of a hospital;

emergency work means work carried out (whether or not in response to an emergency) by or on behalf of an emergency services provider;

hospital has the same meaning as in the *Health Care Act 2008*;

medical practitioner has the same meaning as in the *Health Practitioner Regulation National Law (South Australia)*;

passenger transport service has the same meaning as in the *Passenger Transport Act 1994*;

passenger transport work means—

- (a) work consisting of driving a public passenger vehicle for the purposes of a passenger transport service; or
- (b) work undertaken as an authorised officer appointed under section 53 of the *Passenger Transport Act 1994*; or
- (c) work undertaken as an authorised person under Part 4 Division 2 Subdivision 2 of the *Passenger Transport Regulations 2009*;

police support work means work consisting of the provision of assistance or services to South Australia Police (and includes, to avoid doubt, the provision of assistance or services to a member of the public who is being assisted, or seeking to be assisted, by South Australia Police);

public passenger vehicle has the same meaning as in the *Passenger Transport Act 1994*;

retrieval medicine means the assessment, stabilisation and transportation to hospital of patients with severe injury or critical illness (other than by a member of SA Ambulance Service Inc);

rural area means an area outside of Metropolitan Adelaide as defined by GRO Plan 639/93.

5—Emergency workers and employing authorities

- (1) For the purposes of the definition of *emergency workers* in section 19A(11) of the Act, the following persons are emergency workers for the purposes of that section:
 - (a) members of an emergency services organisation within the meaning of the *Fire and Emergency Services Act 2005*;
 - (b) persons engaged in the provision of emergency ambulance services in accordance with section 57(1) of the *Health Care Act 2008* on behalf of SA Ambulance Service Inc.
- (2) For the purposes of paragraph (b) of the definition of *employing authority* in section 19A(11) of the Act, the employing authority for a person who is an emergency worker for the purposes of that section is—
 - (a) in relation to an emergency worker referred to in subregulation (1)(a)—
 - (i) if the emergency worker is a member of the South Australian Metropolitan Fire Service—the Chief Officer of SAMFS; or
 - (ii) if the emergency worker is a member of the South Australian Country Fire Service—the Chief Officer of SACFS; or
 - (iii) if the emergency worker is a member of the South Australian State Emergency Service—the Chief Officer of SASES; or
 - (b) in relation to an emergency worker referred to in subregulation (1)(b)—the Chief Executive Officer of SA Ambulance Service Inc.

6—Certain conduct not to constitute street race

- (1) For the purposes of the definition of *street race* in section 19AD(7) of the Act, the following conduct is declared not to be included within the ambit of that definition:
 - (a) conduct reasonably occurring in the course of—
 - (i) obtaining a genuine qualification (however described) to operate a motor vehicle of a particular kind or in a particular manner; or
 - (ii) participation in a genuine program designed to improve the defensive driving skills of a person;
 - (b) conduct that occurs in the course of an event the subject of an order made under section 33 of the *Road Traffic Act 1961* (being conduct that complies with any requirement or condition imposed in relation to the order);
 - (c) conduct that occurs in the course of an event the subject of a permit granted by Motorsport Australia (being conduct that complies with any requirement or condition imposed in relation to the permit);
 - (d) conduct that occurs in the course of an event comprising a tour, regularity trial, treasure hunt or similar event in which the participants drive in a manner that indicates a general intention to comply with the provisions of the *Road Traffic Act 1961*;
 - (e) conduct comprising a road test of a motor vehicle that occurs—
 - (i) in the course of the purchase, or potential purchase, of the motor vehicle; or

- (ii) in the course of, or is consequential upon, repairing or maintaining the motor vehicle,
and that is undertaken in a manner that indicates a general intention on the part of the driver to comply with the provisions of the *Road Traffic Act 1961*;
 - (f) conduct that occurs with the approval of the Commissioner of Police.
- (2) An application for approval under subregulation (1)(f) must be made in a manner and form determined by the Commissioner of Police.
- (3) An approval under subregulation (1)(f)—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) may be varied or revoked by the Commissioner of Police by notice in writing.
- (4) If a person contravenes or fails to comply with a condition specified in an approval under subregulation (1)(f), the approval does not, while the contravention or non-compliance continues, operate in that person's favour.

7—Prescribed objects

- (1) For the purposes of section 32A of the Act, a ***prescribed object*** is an object that would, on impact with a vehicle, cause severe damage to the vehicle or harm (whether directly or indirectly) to an occupant of the vehicle (but does not include soft fruits, vegetables or eggs).

Examples—

- (a) rocks;
 - (b) bricks;
 - (c) lumps, blocks or pieces of clay or concrete;
 - (d) sizeable or heavy pieces of metal or metal objects;
 - (e) sizeable or heavy pieces of wood;
 - (f) glass bottles;
 - (g) filled cans or plastic containers.
- (2) In this regulation—
harm has the same meaning as in section 21 of the Act.

8—Certain activities or functions not to constitute administering website

For the purposes of the definition of ***administering*** a website in section 62 of the Act, the following are activities or functions of a kind excluded from the ambit of that definition:

- (a) the administration, or assisting in the administration, of a website by a police officer or other law enforcement officer acting in the course of the officer's duties;
- (b) the administration, or assisting in the administration, of a website by any other person acting in the course of the person's duties in the administration of the criminal justice system.

9—Certain activities or functions not to constitute hosting website

For the purposes of the definition of *hosting* a website in section 62 of the Act, the following are activities or functions of a kind excluded from the ambit of that definition:

- (a) the hosting, or assisting in the hosting, of a website by a police officer or other law enforcement officer acting in the course of the officer's duties;
- (b) the hosting, or assisting in the hosting, of a website by any other person acting in the course of the person's duties in the administration of the criminal justice system.

10—Relevant industry regulatory authority

For the purposes of the definition of *relevant industry regulatory authority* in section 62 of the Act, the eSafety Commissioner appointed under the *Enhancing Online Safety Act 2015* of the Commonwealth is prescribed as a relevant industry regulatory authority for the purposes of section 63AB(3)(d) of the Act.

11—Prescribed explosive substances

For the purposes of the definition of *explosive substance* in section 83M(1) of the Act, the following substances are prescribed:

- (a) acetone;
- (b) aluminium powder;
- (c) ammonium nitrate;
- (d) ammonium perchlorate;
- (e) hydrogen peroxide;
- (f) magnesium powder;
- (g) methyl ethyl ketone;
- (h) nitric acid;
- (i) nitromethane;
- (j) potassium chlorate;
- (k) potassium nitrate;
- (l) potassium perchlorate;
- (m) sodium azide;
- (n) sodium chlorate;
- (o) sodium nitrate;
- (p) sodium perchlorate.

12—Prescribed equipment

- (1) For the purposes of section 83O(1)(b) of the Act, the following equipment is prescribed:
 - (a) equipment of a kind that is used to perform the function of an ice bath or a chemical reaction cooling system in the manufacture of an explosive substance or an explosive device;
 - (b) equipment of a kind that is used to perform the function of grinding or mixing in the manufacture of an explosive substance or an explosive device;
 - (c) equipment of a kind that is used to perform the function of a reaction vessel in the manufacture of an explosive substance or an explosive device;
 - (d) equipment that forms part of equipment of a kind referred to in a preceding paragraph;
 - (e) equipment that would, but for modifications apparently made to the equipment, be equipment of a kind referred to in a preceding paragraph.
- (2) Equipment may be determined to be of a kind prescribed in subregulation (1) regardless of whether the equipment—
 - (a) is in working order; or
 - (b) has been commercially manufactured or appears to be home-made.

13—Dealing with surrendered items

- (1) For the purposes of sections 269NC(3) and 269OA(3) of the Act, the Commissioner of Police must deal with a surrendered item in accordance with this regulation.
- (2) A surrendered item that is a prohibited weapon (within the meaning of the *Summary Offences Act 1953*), or that is an item that cannot otherwise be lawfully possessed in this State, is, by force of this subregulation, forfeited to the Crown.
- (3) The Commissioner of Police must retain a surrendered item (other than a surrendered item forfeited under subregulation (2)) in a location determined by the Commissioner of Police until—
 - (a) the surrendered item is forfeited to the Crown under this or any other Act; or
 - (b) the surrendered item is returned in accordance with this regulation to the person who surrendered it; or
 - (c) the surrendered item is seized or surrendered under the provisions of another Act,whichever occurs first.
- (4) If—
 - (a) the condition imposed under section 269NB(4)(a) of the Act on the release on licence of the person who surrendered the surrendered item is revoked, or a Division 3A order to which the person is subject is revoked or lapses; or
 - (b) the condition imposed under section 269O(1a)(a) of the Act on the release on licence of the person who surrendered the surrendered item is revoked, or a supervision order to which the person is subject is revoked or lapses,

(as the case may be) the person may notify the Commissioner of Police of that fact.

- (5) Subject to this regulation, if the Commissioner of Police—
- (a) is notified pursuant to subregulation (4); or
 - (b) otherwise becomes aware that—
 - (i) the release on licence of the person is no longer subject to the condition imposed under section 269NB(4)(a), or the Division 3A order to which the person is subject is revoked or lapses; or
 - (ii) the release on licence of the person is no longer subject to the condition imposed under section 269O(1a)(a), or the supervision order to which the person is subject is revoked or lapses,

(as the case may be) the Commissioner of Police must cause the surrendered item to be returned to the person who surrendered the item.

- (6) If the Commissioner of Police is required to return a surrendered item under subsection (5), the Commissioner of Police must give notice in writing to the person who surrendered the item setting out—
- (a) that the surrendered items specified in the notice are to be returned to the person; and
 - (b) the location at which the surrendered items may be collected; and
 - (c) that the surrendered items must be collected from the specified location within 3 months of the date specified in the notice (or such longer time as may be specified by the Commissioner of Police); and
 - (d) that the surrendered items will only be returned if the person holds any necessary authorisation under the *Firearms Act 2015* or any other Act to possess the surrendered item; and
 - (e) the effect of subregulations (7) and (8).
- (7) However, the Commissioner of Police may refuse to return a surrendered item to a person if—
- (a) the person is on conditional release that is subject to a condition prohibiting the person from possessing a firearm, ammunition or part of a firearm; or
 - (b) the person does not hold any necessary authorisation under the *Firearms Act 2015* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,

and, if the Commissioner of Police does so refuse, he or she must give notice in writing to the person who surrendered the surrendered item setting out—

- (c) the reasons for the refusal; and
 - (d) in the case of a refusal contemplated by subregulation (7)(a)—the effect of subregulation (9).
- (8) If—
- (a) a surrendered item is not collected within the period specified in subregulation (6)(c); or

- (b) the person does not, at the end of the period specified in subregulation (6)(c), hold the necessary authorisation under the *Firearms Act 2015* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,
- the surrendered item is, by force of this subregulation, forfeited to the Crown.
- (9) If the Commissioner of Police refuses to return a surrendered item to a person pursuant to subregulation (7)(a)—
- (a) the surrendered item will be taken to have been surrendered pursuant to a direction under the provision of the Act under which the conditional release was granted (corresponding to section 269NC(1) or 269OA(1) of the Act, as the case requires); and
- (b) the surrendered item must be dealt with in accordance with that Act.
- (10) The Commissioner of Police may recover from the person who surrendered the surrendered item the reasonable costs incurred in connection with the storage of the surrendered item.
- (11) This regulation is in addition to, and does not derogate from, the operation of any other Act or law.
- (12) No compensation is payable by the Crown in respect of the forfeiture of a surrendered item under this regulation.
- (13) A notice required to be given to a person under this regulation may—
- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person—
- (i) at the person's last known address; or
- (ii) at the person's address for service; or
- (c) be left for the person at the person's last known address or address for service with someone apparently over the age of 16 years.
- (14) In this regulation—
- conditional release*** means—
- (a) a grant of bail under the *Bail Act 1985*; or
- (b) a bond under the *Sentencing Act 2017* or the *Criminal Law (Sentencing) Act 1988*; or
- (c) release on home detention under the *Sentencing Act 2017* or the *Criminal Law (Sentencing) Act 1988*; or
- (d) release on an intensive correction order under the *Sentencing Act 2017*; or
- (e) release on licence under the Act, the *Sentencing Act 2017* or the *Criminal Law (Sentencing) Act 1988*; or
- (f) release from prison on home detention or parole under the *Correctional Services Act 1982*; or
- (g) release on licence, on home detention or conditional release from detention, under the *Young Offenders Act 1993*;

surrendered item means a firearm, ammunition or any part of a firearm surrendered pursuant to a direction under section 269NC(1) or 269OA(1) of the Act.

14—False or misleading information entered into electronic court management system

- (1) For the purposes of the definition of *ECMS* in section 241A(3) of the Act, the electronic court management systems established under the *Uniform Civil Rules 2020* and the *Supreme Court Probate Rules 2015* are prescribed.
- (2) For the purposes of paragraph (b) of the definition of *enters information into an ECMS* in section 241A(3) of the Act, the marking of a check box (however described) selecting a particular option is prescribed.
- (3) For the purposes of the definition of *information* in section 241A(3) of the Act, the following information, or information of a kind, is prescribed:
 - (a) information setting out—
 - (i) in the case of a party who is a natural person—
 - (A) the name, business name or trading name of the person; or
 - (B) an Australian Business Number; or
 - (C) the date of birth of the person; or
 - (D) the residential address of the person; or
 - (E) an address at which documents can be served on the person; or
 - (F) a telephone number; or
 - (G) an email address; or
 - (ii) in the case of a party who is a body corporate—
 - (A) the name, business name or trading name of the body corporate; or
 - (B) an Australian Business Number or Australian Company Number; or
 - (C) the name, date of birth and residential address of a director of the body corporate; or
 - (D) the registered office (if any) of the body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
 - (E) an address at which the body corporate undertakes activities; or
 - (F) an address at which documents can be served on the body corporate; or
 - (G) a telephone number; or
 - (H) an email address;

- (b) in the case where a party is acting, or purportedly acting, on behalf of another person or body—information identifying that person or body, the relationship of that person or body to the party and the basis on which the party is acting on behalf of that person or body;
- (c) information setting out the nature of a party (for example, whether a party is an individual, partnership, organisation or regular party);
- (d) information relating to whether a specified person is a legal practitioner;
- (e) information relating to whether any relevant orders have been made by a court or tribunal and the terms of those orders;
- (f) information relating to a probate, testamentary or administration matter (including, to avoid doubt, information relating to the assets and liabilities of a person or any other information which may affect a right or liability in relation to an estate).

15—Determination of appropriate form of custody—section 269X

- (1) For the purposes of the definition of *designated officer* in section 269X(7) of the Act, the office of Clinical Director, Forensic Mental Health Services, Department for Health and Wellbeing, is prescribed.
- (2) In determining an appropriate form of custody for the detention of a defendant pursuant to section 269X(5) of the Act, the designated officer must consult with the CE (within the meaning of section 269X) and take into account any representation made to the designated officer by the CE in respect of an appropriate form of custody for the defendant.

Schedule 1—Revocation of *Criminal Law Consolidation (General) Regulations 2006*

The *Criminal Law Consolidation (General) Regulations 2006* are revoked.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2021	116	<i>Gazette 12.8.2021 p3054</i>	12.8.2021:r 2