

South Australia

Criminal Law Consolidation (General) Variation Regulations 2013

under the *Criminal Law Consolidation Act 1935*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Criminal Law Consolidation (General) Regulations 2006*

- 4 Insertion of regulation 4A
 - 4A Dealing with surrendered items
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Criminal Law Consolidation (General) Variation Regulations 2013*.

2—Commencement

These regulations will come into operation on the day on which Part 5 of the *Statutes Amendment (Serious Firearm Offences) Act 2012* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Criminal Law Consolidation (General) Regulations 2006*

4—Insertion of regulation 4A

After regulation 4 insert:

4A—Dealing with surrendered items

- (1) For the purposes of section 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 the condition imposed under section 269O(1a)(a) 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, 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 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,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 subregulation (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 1977* 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 1977* 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 1977* 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 269OA(1) of the Act); 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 Act or the *Criminal Law (Sentencing) Act 1988*; or
- (c) release from prison on home detention or parole, under the *Correctional Services Act 1982*; or
- (d) release on licence under the Act or the *Criminal Law (Sentencing) Act 1988*; or
- (e) release on licence, 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 269OA(1) of the Act.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 21 February 2013

No 17 of 2013