

South Australia

Expiation of Offences Variation Regulations 2014

under the *Expiation of Offences Act 1996*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Expiation of Offences Regulations 2011*

- 4 Insertion of regulations 4A, 4B, 4C, 4D and 4E
 - 4A Fee to enter arrangement
 - 4B Community service requirements in arrangements
 - 4C Arrangements with prescribed alleged offenders
 - 4D Authority to obtain information
 - 4E Exception to expiation on arrangement or enforcement
 - 5 Variation of regulation 7—Notices relating to more than 1 offence
 - 6 Substitution of regulation 8
 - 8 Enforcement determination fee
 - 9 Fee for application for revocation of enforcement determination
 - 10 Notice of making, variation or revocation of enforcement determination
 - 11 Amounts unpaid or unrecovered for more than certain period
 - 12 Disclosure of information to prescribed interstate authority
 - 13 Transitional provision
 - 7 Variation of Schedule 1—Forms
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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Expiation of Offences Variation Regulations 2014*.

2—Commencement

These regulations will come into operation on the day on which Part 6 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* 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 *Expiation of Offences Regulations 2011*

4—Insertion of regulations 4A, 4B, 4C, 4D and 4E

After regulation 4 insert:

4A—Fee to enter arrangement

- (1) For the purposes of section 9(1) of the Act, the fee to enter into an arrangement is—
 - (a) in relation to an arrangement entered into on or before 30 June 2014—\$0; or
 - (b) in relation to an arrangement entered into after 30 June 2014—\$18.
- (2) A person who satisfies the Fines Enforcement and Recovery Officer that he or she is suffering financial hardship such that he or she cannot pay the fee to enter into an arrangement under section 9(1) of the Act is, however, exempt from the fee.

4B—Community service requirements in arrangements

For the purposes of section 9(4)(f) of the Act, the following provisions apply in relation to community service under an arrangement entered into between the Fines Enforcement and Recovery Officer and an alleged offender:

- (a) the number of hours of community service to be performed by the alleged offender is to be calculated at the rate of 7.5 hours for each \$100 to be converted to community service;
- (b) the minimum number of hours of community service that may be required under an arrangement is 7.5 hours;
- (c) the maximum number of hours of community service that may be required under an arrangement is 500 hours;
- (d) the arrangement must not specify a number of hours of community service to be performed by an alleged offender who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours currently being performed, or to be performed, would exceed 500;
- (e) the arrangement must specify a period, not exceeding 18 months, within which the community service is to be performed;
- (f) the alleged offender must report to a specified office of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* within 2 working days after the arrangement is entered into;

- (g) on reporting under paragraph (f), the alleged offender must be assigned to a community corrections officer by whom the alleged offender will be supervised while performing community service;
- (h) the alleged offender must perform community service for not less than 4 hours each week and on such day, or days, as the community corrections officer to whom the alleged offender is assigned may direct;
- (i) in performing community service the alleged offender must carry out certain projects or tasks as the assigned community corrections officer reasonably requires;
- (j) the alleged offender may not, except in circumstances approved by the Minister for Correctional Services, be required to perform community service for a continuous period exceeding 7.5 hours;
- (k) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;
- (l) the alleged offender may not be required to perform community service at a time that would interfere with his or her remunerated employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, remunerated employment, or that would cause unreasonable disruption of the alleged offender's commitments in caring for his or her dependants;
- (m) the alleged offender may not be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises;
- (n) the attendance of the alleged offender at any educational or recreational course of instruction approved by the Minister for Correctional Services will be taken to be performance of community service;
- (o) the alleged offender will not be remunerated for the performance of any community service pursuant to the order;
- (p) the alleged offender must obey the lawful directions of the community corrections officer to whom he or she is assigned.

4C—Arrangements with prescribed alleged offenders

For the purposes of section 9(6)(c) of the Act, alleged offenders who have previously failed to comply with an arrangement under section 9 of the Act resulting in the termination of the arrangement under section 9(10) of the Act are prescribed.

4D—Authority to obtain information

For the purposes of section 9(6)(e) of the Act, an irrevocable authority to obtain financial and contact information about the alleged offender under that section must have effect (and may only be used by the Fines Enforcement and Recovery Officer), during the period that an amount due remains outstanding.

4E—Exception to expiation on arrangement or enforcement

An alleged offender will not be taken to have expiated an offence or offences in accordance with sections 9(14) and 13(3) of the Act for the purposes of the following laws:

- (a) the *Criminal Law (Sentencing) Act 1988*;
- (b) the *Victims of Crime Act 2001*;
- (c) the *Young Offenders Act 1993*.

5—Variation of regulation 7—Notices relating to more than 1 offence

Regulation 7(4), (5) and (6)—delete subregulations (4), (5) and (6)

6—Substitution of regulation 8

Regulation 8—delete the regulation and substitute:

8—Enforcement determination fee

- (1) For the purposes of section 13(1)(b) of the Act, the fee payable by an issuing authority for the enforcement of an expiation notice is—
 - (a) in relation to an expiation notice sent to the Fines Enforcement and Recovery Officer on or before 30 June 2014—\$0; or
 - (b) in relation to an expiation notice sent to the Fines Enforcement and Recovery Officer after 30 June 2014—\$18.
- (2) A public sector agency (within the meaning of the *Public Sector Act 2009*) is, however, exempt from the fee for the enforcement of an expiation notice under section 13(1)(b) of the Act.

9—Fee for application for revocation of enforcement determination

- (1) For the purposes of section 13(5) of the Act, the fee for an application to the Fines Enforcement and Recovery Officer to revoke an enforcement determination is \$22.
- (2) A public sector agency (within the meaning of the *Public Sector Act 2009*) is, however, exempt from the fee to revoke an enforcement determination referred to in subregulation (1).

10—Notice of making, variation or revocation of enforcement determination

- (1) For the purposes of section 13(11) of the Act, the following particulars must be included in a notice given to an alleged offender the subject of an enforcement determination:
 - (a) whether the enforcement determination is being made, varied or revoked and, if the determination is being made or varied, the terms of the determination or variation;
 - (b) the date on which the determination, variation or revocation takes effect;
 - (c) a list of all amounts owing in relation to the determination;
 - (d) details of each alleged offence to which the determination relates including—
 - (i) the date of each such offence; and
 - (ii) the issuing authority in relation to each such offence; and
 - (iii) a brief description of the particulars of each such offence;
 - (e) the reason for the variation or revocation of the determination.
- (2) For the purposes of section 13(11) of the Act, the following particulars must be included in a notice given to an issuing authority:
 - (a) the name, address and any other particulars necessary to identify the alleged offender;
 - (b) details of each alleged offence under the determination for which the issuing authority issued an expiation notice to the alleged offender;
 - (c) a list of all amounts owing under the determination in relation to expiation notices issued by the issuing authority;
 - (d) whether the enforcement determination is being made, varied or revoked and, if the determination is being made or varied, the terms of the determination or variation;
 - (e) the date on which the determination, variation or revocation takes effect;
 - (f) the reason for the variation or revocation of the determination.

11—Amounts unpaid or unrecovered for more than certain period

- (1) For the purposes of section 14B(1) of the Act, the prescribed amount is \$255.

- (2) Section 14B(1) of the Act does not apply in circumstances where an enforcement determination has not been made in relation to the relevant expiation fee.

12—Disclosure of information to prescribed interstate authority

For the purposes of section 18D of the Act—

- (a) the following particulars are prescribed:
- (i) name;
 - (ii) date of birth;
 - (iii) current residential address;
 - (iv) previous residential addresses;
 - (v) contact details, including contact telephone number and email address;
 - (vi) the name and address of the alleged offender's next of kin;
 - (vii) the employment details, including the name of an employer and the address of the place of employment;
 - (viii) the details of the pecuniary sum owed including a breakdown of the amounts owed specifying relevant dates and the offences to which the pecuniary sum relates;
 - (ix) the details of the pecuniary sum owed including a breakdown of the amounts owed specifying relevant dates and the offences to which the pecuniary sum relates; and
- (b) any person or body in another State or Territory of the Commonwealth with responsibility, under a law of that jurisdiction, for the collection of amounts due in relation to expiation notices (however described) issued in the jurisdiction or fines imposed by a court of the jurisdiction, is a prescribed interstate authority.

13—Transitional provision

Section 14 of the Act as in force immediately before the commencement of Part 6 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* continues to apply in relation to an application made under that section.

7—Variation of Schedule 1—Forms

- (1) Schedule 1, clause 1(1)(e) and (f)—delete paragraphs (e) and (f) and substitute:
- (e) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.
- Pay the total amount due for the offence(s) not disputed (including levies).
- Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.
- If you think the offence(s) (or any of them) was trifling—apply to the *issuing authority* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

If applicable:

- If the offence is a parking or traffic offence and you were not driving at the time of the offence you may be able to provide a statutory declaration in accordance with the *Road Traffic Act 1961* or other relevant legislation.
- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made for an offence within the expiation period 1 reminder notice will be sent and a reminder fee will apply. After that, the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.

(2) Schedule 1, clause 2(1)(e) and (f)—delete paragraphs (e) and (f) and substitute:

- (e) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.
- Pay the total amount due for the offence(s) not disputed (including levies and reminder notice fees).
- Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.

- If you think the offence(s) (or any of them) was trifling—apply to the [issuing authority] for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

If applicable:

- If the offence is a parking or traffic offence and you were not driving at the time of the offence you may be able to provide a statutory declaration in accordance with the *Road Traffic Act 1961* or other relevant legislation.
- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.

(3) Schedule 1, clause 3(1)(f) and (g)—delete paragraphs (f) and (g) and substitute:

- (f) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for all offence(s) not disputed (including levies, warning notice fees and reminder notice fees).
 - Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.
 - If you think the offence(s) (or any of them) was trifling—apply to the [issuing authority] for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).
- (g) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made for an offence within the expiation period the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.

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 30 January 2014

No 29 of 2014

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