

South Australia

Criminal Procedure (General) Regulations 2017

under the *Criminal Procedure Act 1921*

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1—Short title

These regulations may be cited as the *Criminal Procedure (General) Regulations 2017*.

2—Commencement

These regulations will come into operation immediately after the *Summary Procedure (Indictable Offences) Amendment Act 2017* comes into operation.

3—Interpretation

In these regulations—

Act means the *Criminal Procedure Act 1921*.

4—Notice of sentencing reductions and processes for entering guilty plea

- (1) For the purposes of section 105(1)(a) of the Act, the notice required to be given to a defendant charged with an indictable offence must include information about—
 - (a) sentencing reductions available under the sentencing laws in relation to guilty pleas in accordance with section 105(2)(a) of the Act; and

- (b) the process for having the matter called on in a court for the purpose of entering a guilty plea in accordance with section 105(2)(b) of the Act.
- (2) The information referred to in subregulation (1)(a) may be set out in writing or in pictorial or graphical form (or any combination of those forms).

5—Prescribed class

- (1) For the purposes of section 111(5)(a)(ii) of the Act, the following are persons of a prescribed class:
 - (a) a person who is a prescribed interviewer for the purposes of section 74EB of the *Summary Offences Act 1953*;
 - (b) a person, or a person of a class, designated by the Minister responsible for the administration of the *Disability Services Act 1993* by notice in the Gazette;
 - (c) a person, or a person of a class, designated by the Minister responsible for the administration of the *Children's Protection Act 1993* by notice in the Gazette.
- (2) A notice referred to in subregulation (1)(b) or (c) may be varied or revoked by the relevant Minister, by subsequent notice in the Gazette.

6—Prescribed form of statement

For the purposes of section 115(4)(a) of the Act, a written statement containing the information set out in Schedule 1 is prescribed.

7—Prosecution response to defence case statement

For the purposes of section 123(9) of the Act, if—

- (a) notice has been provided to the prosecution by the defendant of the defendant's intention to introduce expert or alibi evidence; and
- (b) the prosecution intends to challenge the admissibility of the expert or alibi evidence,

the prosecution must file a response that outlines the basis on which it intends to challenge the admissibility of that evidence.

8—Prosecution witness fees

- (1) Subject to this regulation, the following amounts may be authorised by a prescribed person as payable in respect of a witness for the prosecution:
 - (a) the actual amount lost, or the expenses necessarily incurred, by the witness by reason of the witness' absence from home or business for the purpose of attending court or \$100 per day, whichever is the lesser;
 - (b) an allowance for the travelling expenses of the witness in attending court, calculated on the basis of travel by public transport to and from court, or, if the use of public transport by the witness is not reasonably practicable, \$0.20 per kilometre necessarily travelled to and from court;
 - (c) if the witness is necessarily absent from home overnight—the accommodation and meal expenses reasonably incurred by the witness;

- (d) if the witness is necessarily accompanied by another person—an amount equal to that which could be certified in accordance with these regulations in respect of that other person if they were a witness for the prosecution.
- (2) If—
 - (a) the amount lost, or the expenses incurred by the witness exceed the amount determined in accordance with subregulation (1)(a); or
 - (b) the travelling expenses incurred by the witness exceed the amount determined in accordance with subregulation (1)(b),

the amount to be paid to the witness may include such further amount as the prescribed person thinks just and reasonable in the circumstances.

- (3) No amount is to be paid in respect of a witness who is an officer or employee of the State or Commonwealth, including a police officer but excluding an officer or employee who is on leave during the period of attendance at court.
- (4) In this regulation—

prescribed person means—

- (a) in the case of proceedings in the Supreme Court or District Court—the Sheriff; or
- (b) in the case of proceedings in the Magistrates Court—a magistrate or justice;

witness includes a witness who attended court but was not called to give evidence.

9—Defence witness fees

- (1) A prescribed authority may, at the request of a witness for the defence in respect of proceedings under the Act, authorise an amount to be paid to the witness of any or all of the amounts that would be payable to the witness if the witness were a witness for the prosecution.
- (2) In this regulation—

prescribed authority means—

- (a) in the case of proceedings in the Supreme Court or the District Court—the Supreme Court or the District Court (as the case requires); or
- (b) in the case of proceedings in the Magistrates Court—a magistrate or justice;

witness has the same meaning as in regulation 8(4).

Schedule 1—Information to be included in statement

1—Defence case statement

General

The prosecution is required to give you (or your lawyer) a prosecution case statement setting out a summary of the facts alleged against you and other information relating to your trial. This must be provided to you 6 weeks before your arraignment in the Supreme or District Court.

You are required to file in court and give to the prosecution a defence case statement not more than 4 weeks after being given the prosecution case statement.

A defence case statement must include—

- (1) any facts and any elements of the offence set out in the prosecution case statement that you admit; and
- (2) any witnesses that you want the prosecution to call (if the witnesses have provided a statement but are not amongst the list of witnesses the prosecution intends to call at trial); and
- (3) an indication of whether you—
 - consent to any of the prosecution applications included in the prosecution case statement;
 - intend to introduce expert evidence or evidence of alibi (in which case you will also be required to comply with the requirement to give notice of your intention to introduce expert or alibi evidence—see section 124 of the *Criminal Procedure Act 1921*);
 - agree with the prosecution estimate of the length of the prosecution case;
 - will apply for trial by judge alone;
 - require an interpreter (and if so, the language that the interpreter will be required to interpret);
 - intend to raise any of the following prior to trial:
 - issues relating to joinder or severance;
 - issues relating to cross-admissibility of evidence;
 - challenges to the legality of any searches;
 - applications for stay of proceedings;
 - issues relating to chain of evidence or continuity of custody of exhibits;
 - points of law.

Changes to defence case statement

If any information or material included in your case statement subsequently changes or information or material is obtained or occurs after your case statement has been filed, you must disclose the information, material or occurrence to the prosecution as soon as possible. You may do this in the form of an updated defence case statement.

Notice of defence case statement to other defendant where jointly charged

If you are jointly charged with 1 or more defendants, your case statement must be given to each other defendant in accordance with any orders made by the court.

2—Information which you may be required to give to the prosecution

The court may authorise the prosecution to serve you with a notice or notices requiring you to provide information in relation to the following matters:

- **Notification of prosecution witnesses who are not required**

The court may require you to notify the prosecution in writing whether you consent to the prosecution not calling witnesses to prove the admissibility of the following kinds of evidence:

- (a) documentary, audio, visual, or audiovisual evidence of surveillance or interview;
- (b) other documentary, audio, visual or audiovisual evidence;
- (c) exhibits.

If you fail to comply with such a notice, the court will assume you have no objection.

- **Notice of defences**

The court may require you to give written notice to the prosecution if you intend to call evidence at the trial which tends to establish that—

- (a) you are mentally unfit to stand trial; or
- (b) you were mentally incompetent to commit the alleged offence(s); or
- (c) the circumstances of the alleged offence(s) occurred by accident; or
- (d) you were entitled to any property which is the subject of the offence(s); or
- (e) you were acting for a defensive purpose.

The court may also require you to give written notice to the prosecution if you intend to call evidence at the trial—

- (a) relating to the defences of provocation, automatism, necessity or duress; or
- (b) that you were intoxicated at the time of the alleged offence(s).

If you fail to give the prosecution notice of any of these matters, you may call evidence about them but the prosecutor or the court or both may comment to the jury on your failure to give notice.

3—Expert evidence

If expert evidence is to be called for the defence at the trial, written notice of your intention to call the evidence must be given to the prosecution at the same time that the defence case statement is filed in court and given to the prosecution or, if the evidence does not become available to the defence until later, or if any expert information already provided to the prosecution in a written notice changes, as soon as practicable after such evidence becomes available or the defence becomes aware of such changes.

The notice must set out the name and qualifications of the expert and describe the general nature of the evidence and what it tends to establish.

The notice must be given in the form required by the *Supreme/District Court Criminal Rules*.

If you wish to introduce expert psychiatric evidence or other expert medical evidence relevant to your mental state or medical condition at the time of the alleged offence(s), the court may require you to submit to an examination by an independent expert approved by the court.

If you fail to submit to a psychiatric or other medical examination as required by the court, the court may not allow you to call expert psychiatric or medical evidence which you wish to tender to the court.

If you fail to comply with any other requirement in relation to expert evidence, you may not be allowed to call the evidence without the court's permission and the prosecutor or the court may comment on your non-compliance to the jury.

4—Alibi evidence

Alibi evidence is evidence that you were at some place other than the scene of the alleged offence(s) at the relevant time.

If you wish to call alibi evidence at your trial and the evidence was not given at your committal hearing, written notice of your intention to call the evidence must be given to the prosecution at the same time that the defence case statement is filed in court and given to the prosecution.

If you do not give notice you may not be able to call alibi evidence, and the prosecutor and the court may be able to comment to the jury on your failure to give notice of that evidence before the trial.

The notice must—

- (a) contain a summary of the facts that you wish to establish by calling the alibi evidence; and
- (b) include the name and address of the witness you intend to call to give the alibi evidence; and
- (c) contain any other particulars and be in the form required by the *Supreme/District Court Criminal Rules*.

Schedule 2—Revocation of regulations

1—Revocation of *Summary Procedure (Section 107 Statements) Regulations 2007*

The *Summary Procedure (Section 107 Statements) Regulations 2007* are revoked.

2—Revocation of *Summary Procedure (Witness Fees) Regulations 2007*

The *Summary Procedure (Witness Fees) Regulations 2007* are revoked.

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 12 December 2017

No 322 of 2017

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