

South Australia

Cross-border Justice (Miscellaneous) Variation Regulations 2017

under the *Cross-border Justice Act 2009*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Cross-border Justice (Miscellaneous) Variation Regulations 2017*.

2—Commencement

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

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 *Cross-border Justice Regulations 2009*

4—Substitution of regulation 7

Regulation 7—delete the regulation and substitute:

7—Calculation of reduction in amount of fines (section 130)

For the purposes of advising a reciprocating agency of an outstanding amount under section 130(2)(a)(iii) of the Act, the amount by which a fine is reduced because an offender has satisfactorily performed all or some of the required hours of a community service order made under section 70U of the *Criminal Law (Sentencing) Act 1988* is to be calculated in accordance with section 70U(8) of that Act.

Note—

The reduction may have been applied by a court in restoring a pecuniary sum pursuant to section 70U(12) and (13) of the *Criminal Law (Sentencing) Act 1988*.

5—Variation of regulation 10—Amendment of section 3—Interpretation

- (1) Regulation 10(1), inserted definition of "*community corrections officer*, of another participating jurisdiction", (b)—delete paragraph (b) and substitute:
 - (b) if the jurisdiction is the Northern Territory—a probation and parole officer as defined in section 4 of the *Correctional Services Act* of the Northern Territory;
- (2) Regulation 10(2)—delete "*intervention program manager*" and substitute:

officer in charge

6—Substitution of regulations 11 to 15

Regulations 11 to 15 (inclusive)—delete the regulations and substitute:

11—Insertion of section 3AA

After section 3A insert:

3AA—Application to persons in custody in participating jurisdictions

This Act applies in relation to a person in the custody of a police officer in a participating jurisdiction who has a connection with a cross-border region.

12—Amendment of section 5—Bail authorities

Section 5(1)—delete subsection (1) and substitute:

- (1) The following are constituted as bail authorities for the purposes of this Act:
 - (a) the Supreme Court;
 - (b) a court before which the eligible person has been charged with the offence in respect of which the eligible person has been taken into custody;
 - (c) a court before which the eligible person has appeared for trial or sentencing;
 - (d) if the eligible person—
 - (i) is charged with a summary offence only; or
 - (ii) is charged with an indictable offence but has not appeared before a court for trial or sentencing,the Magistrates Court;
 - (e) if the eligible person—
 - (i) has been arrested on a warrant (other than a warrant endorsed by the court or justice issuing the warrant with a statement excluding the granting of bail by a police officer); or
 - (ii) has not appeared before a court charged with the offence in respect of which he or she has been taken into custody,

a police officer (including a police officer of another participating jurisdiction who holds a secondary office as a police officer of the State) who is—

- (iii) of or above the rank of sergeant;
or
 - (iv) the responsible officer for a police station;
- (ea) if the eligible person is appearing before a court in answer to a summons or for allegedly failing to observe a condition of a recognizance—that court;
- (eb) if the eligible person is appearing, or is to appear, as a witness before a court—that court;
- (f) a person authorised or required to release the eligible person on bail under subsection (2).

13—Amendment of section 6—Nature of bail agreement

Section 6(3)—delete subsection (3) and substitute:

- (3) If a bail authority decides to release a person on bail, the bail agreement may be entered into before the bail authority or, unless the bail authority otherwise directs, before—
- (a) if the bail agreement is entered into in this State—a justice; or
 - (b) a police officer (including a police officer of another participating jurisdiction who holds a secondary office as a police officer of the State) who is—
 - (i) of or above the rank of sergeant;
or
 - (ii) the responsible officer for a police station; or
 - (c) if the person is in prison—the person who is in charge of the prison; or
 - (ca) a registrar or deputy registrar of a court; or
 - (d) any other person specified by the bail authority or any other person of a class specified by the bail authority.

14—Amendment of section 7—Guarantee of bail

Section 7(3)—delete subsection (3) and substitute:

- (3) A guarantee of bail may be entered into before the bail authority granting bail or, unless the bail authority otherwise directs, before—
 - (a) a justice; or
 - (b) a police officer (including a police officer of another participating jurisdiction who holds a secondary office as a police officer of the State) who is—
 - (i) of or above the rank of sergeant; or
 - (ii) the responsible officer for a police station; or
 - (c) if the person who is to be released on bail is in prison—the person who is in charge of the prison; or
 - (ca) a registrar or deputy registrar of a court; or
 - (d) any other person specified by the bail authority or any other person of a class specified by the bail authority.

15—Amendment of section 11—Conditions of bail

(1) Section 11(6)—delete subsection (6) and substitute:

- (6) It is a condition of every bail agreement that the person released under the agreement will not leave the State for any reason—
 - (a) if the person is under the supervision of a community corrections officer—without the permission of the Chief Executive (or his or her nominee) of the administrative unit of which the community corrections officer is an officer or employee;
 - (c) in any other case—without the permission of—
 - (i) a judge or magistrate; or
 - (ii) a police officer (including a police officer of another participating jurisdiction who holds a secondary office as a police officer of the State) who is—
 - (A) of or above the rank of sergeant; or

- (B) the responsible officer for a police station.

(2) Section 11—after subsection (6) insert:

- (6a) For the purposes of subsection (6), an area of the cross-border region that is within Western Australia or the Northern Territory will be taken to be part of the State.

7—Substitution of regulation 18

Regulation 18—delete the regulation and substitute:

18—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *police officer* insert:

police station includes a police station in another participating jurisdiction;

8—Revocation of regulation 19

Regulation 19—delete the regulation

9—Substitution of regulation 20

Regulation 20—delete the regulation and substitute:

20—Substitution of section 269V

Section 269V—delete the section and substitute:

269V—Custody, supervision and care

- (1) If a defendant is committed to detention under this Part, the defendant is in the custody of the Minister and the Minister may give directions for the custody, supervision and care of the defendant the Minister considers appropriate.
- (2) The Minister may—
 - (a) place the defendant under the custody, supervision and care of another (who may, subject to subsection (6), be a person in another participating jurisdiction); and
 - (b) if there is no practicable alternative—direct that a defendant be kept in custody in a prison (which may, subject to subsection (6), be a prison in another participating jurisdiction).

- (3) Supervisory responsibilities arising from conditions on which a person is released on licence are to be divided between the Parole Board and the Minister in the following way:
- (a) the supervisory responsibilities are to be exercised by the Minister insofar as they relate to treating or monitoring the mental condition of the person;
 - (b) the supervisory responsibilities are in all other respects to be exercised by the Parole Board.
- (4) The Minister or the Parole Board (as the case may be) may delegate a power or function under this section—
- (a) to a person for the time being performing particular duties or holding or acting in a particular position; or
 - (b) to any other person or body that, in the delegator's opinion, is competent to perform or exercise the relevant functions or powers.
- (5) A delegation under subsection (4)—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the delegator to act in any matter; and
 - (d) is revocable at will by the delegator.
- (6) The Minister may not direct that a defendant be placed under the custody, supervision and care of a person, or kept in custody in a prison, in another participating jurisdiction unless—
- (a) if that other jurisdiction is Western Australia—the CEO within the meaning of the *Mental Health Act 2014* of Western Australia; or
 - (b) if that other jurisdiction is the Northern Territory—the CEO within the meaning of the *Mental Health and Related Services Act* of the Northern Territory.
- has consented to the defendant being so placed or kept.

10—Variation of regulation 22—Amendment of section 3—Interpretation

Regulation 22, inserted definition of "*community corrections officer*, of another participating jurisdiction", (b)—delete paragraph (b) and substitute:

- (b) if the jurisdiction is the Northern Territory—a probation and parole officer as defined in section 4 of the *Correctional Services Act* of the Northern Territory;

11—Insertion of regulation 25A

After regulation 25 insert:

25A—Amendment of section 70U—Community service orders

Section 70U—after subsection (11) insert:

- (12) If a community service order is in force under this section in respect of a fine registered in this jurisdiction pursuant to section 126(1) of the *Cross-border Justice Act 2009*, the Court may, if satisfied that section 130 of the *Cross-border Justice Act 2009* applies in respect of the fine—
 - (a) revoke the community service order; and
 - (b) order the restoration of the pecuniary sum in respect of which the community service order was made.
- (13) In restoring a pecuniary sum under subsection (12), the Court must take into account the number of hours of community service (if any) that the person performed under the revoked community service order.

12—Variation of regulation 27—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

Regulation 27(2)—delete subregulation (2)

13—Substitution of regulation 32

Regulation 32—delete the regulation and substitute:

32—Substitution of section 59

Section 59—delete the section and substitute:

59—Appointment of special constables

- (1) Subject to subsection (2), the Commissioner may appoint a person to be a special constable for the whole ~~or a part of the State~~ of a participating jurisdiction or for a part of a participating jurisdiction.

- (2) ~~The Commissioner may only appoint a police cadet to be a special constable for the whole or a part of the State if a declaration has been made under Part 4 Division 3 of the *Emergency Management Act 2004* (and the term of any such appointment will be for the period specified in the declaration under that Act and, if the period of the declaration is extended under that Act, for such further periods).~~
- (3) An appointment under this section may be made—
 - (a) ~~if a declaration has been made under Part 4 Division 3 of the *Emergency Management Act 2004* orally; or~~
 - (b) ~~in any other case~~—by instrument in writing.
- (4) ~~If the appointment is made orally, the Commissioner must, as soon as practicable, confirm the appointment by instrument in writing.~~
- (5) An instrument of appointment or confirming the appointment of a special constable must specify the term and conditions of the appointment, including—
 - (a) if the appointment is for the whole of ~~the State~~ a participating jurisdiction—that fact; and
 - (b) in any other case—the part of ~~the State~~ a participating jurisdiction for which the special constable is appointed.

14—Substitution of Part 4 Division 13

Part 4 Division 13—delete Division 13 and substitute:

Division 13—Modifications of *Police Regulations 2014*

33—Substitution of regulation 84

Regulation 84—delete the regulation and substitute:

84—Illness or injury of prisoners

- (1) If it is necessary to obtain medical assistance for a prisoner at a police station who is ill or injured, the responsible officer for the police station—
 - (a) must, if practicable, cause the prisoner to be conveyed to—

- (i) an incorporated hospital within the meaning of the *Health Care Act 2008*; or
 - (ii) a public hospital or a private hospital within the meaning of the *Private Hospitals and Health Services Act 1927* of Western Australia; or
 - (iii) a hospital within the meaning of the *Medical Services Act* of the Northern Territory; or
- (b) if that is not practicable, must cause the prisoner to be attended by a police medical officer or other medical practitioner.
- (2) In this regulation—

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

15—Variation of regulation 37—Amendment of section 5—Interpretation

Regulation 37(1)—delete subregulation (1) and substitute:

- (1) Section 5(1)—after the definition of *mass limit* insert:

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

16—Revocation of regulation 39

Regulation 39—delete the regulation

17—Substitution of regulation 40

Regulation 40—delete the regulation and substitute:

40—Amendment of section 78—Person apprehended without warrant—how dealt with

Section 78(10)—after the definition of *nearest custodial police station* insert:

police station includes a police station in another participating jurisdiction;

18—Variation of regulation 45—Amendment of section 69A—Examination of defendant

Regulation 45(3)—delete subregulation (3) and substitute:

(3) Section 69A—after subsection (4) insert:

(5) In this section—

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

psychologist means a person who is registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student).

19—Variation of regulation 49—Amendment of section 4—Interpretation

(1) Regulation 49(1)—after "4" insert:

(1)

(2) Regulation 49(4), (5) and (6)—delete subregulations (4), (5) and (6) and substitute:

(4) Section 4(1)—after the definition of *offence to which this Act applies* insert:

police station includes a police station in another participating jurisdiction;

prison includes a prison in another participating jurisdiction under its cross-border laws;

(5) Section 4(1), definition of *training centre*—delete the definition and substitute:

training centre means—

(a) a facility for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act*; or

(b) a detention centre in another participating jurisdiction under its cross-border laws;

(6) Section 4(1)—after the definition of *Victims Register* insert:

watch-house includes a watch-house in another participating jurisdiction;

20—Variation of regulation 51—Amendment of section 23—Limitation on power to impose custodial sentence

Regulation 51, inserted subsection (8), definition of *prison laws*, (c)—delete "*Prisons (Correctional Services) Act*" and substitute:

Correctional Services Act

21—Revocation of regulation 52

Regulation 52—delete the regulation

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's Deputy

with the advice and consent of the Executive Council
on 25 July 2017

No 201 of 2017

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