

South Australia

# Criminal Law Consolidation (General) Regulations 2006

under the *Criminal Law Consolidation Act 1935*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Criminal Law Consolidation (General) Regulations 2006*.

### 3—Interpretation

In these regulations—

*Act* means the *Criminal Law Consolidation Act 1935*.

### 3A—Prescribed occupations and employment—aggravated offences

- (1) For the purposes of section 5AA(1)(k)(ii) of the Act, the following occupations and employment are prescribed:
  - (a) emergency work;
  - (b) employment as a medical practitioner in a hospital;
  - (c) employment as a nurse or midwife in a hospital;
  - (d) an occupation consisting of the provision of assistance or services, in a hospital, to a medical practitioner, nurse or midwife acting in the course of his or her employment in the hospital;
  - (e) passenger transport work.
- (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;

**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) a body or organisation that is a member of Volunteer Marine Rescue—South Australia Incorporated; or
- (h) 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*;

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

### **3B—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 under 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.

### **3C—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 the Confederation of Australian Motor Sport (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.

#### 4—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.

#### 4A—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 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 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 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 269NC(1) or 269OA(1) of the Act.

### **5—Notice to admit facts—prescribed form of warning**

For the purposes of section 285BA(3) of the Act the prescribed form of warning to be included in a notice under section 285BA is as follows:

You are not required to admit these facts, but if you are convicted, the Court is required to take an unreasonable failure to make an admission in response to this notice into account in fixing sentence.

You would unreasonably fail to admit facts if, for example, you claimed privilege against incriminating yourself as a reason for not making the admission and made the prosecution prove facts which were not seriously contested at your trial.

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Formerly

*Criminal Law Consolidation (Section 32A Prescribed Objects) Regulations 2006*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2006	223	<i>Gazette 7.9.2006 p3173</i>	10.9.2006: r 2
2007	16	<i>Gazette 1.3.2007 p680</i>	1.3.2007: r 2
2007	314	<i>Gazette 13.12.2007 p4883</i>	13.12.2007: r 2
2011	195	<i>Gazette 18.8.2011 p3491</i>	21.8.2011: r 2
2013	17	<i>Gazette 21.2.2013 p501</i>	4.3.2013: r 2
2013	24	<i>Gazette 7.3.2013 p763</i>	10.3.2013: r 2
2016	21	<i>Gazette 14.4.2016 p1167</i>	22.4.2016: r 2
2017	321	<i>Gazette 12.12.2017 p4963</i>	5.3.2018: r 2
<b>2017</b>	<b>348</b>	<b><i>Gazette 19.12.2017 p5187</i></b>	<b>19.12.2017: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
r 1	varied by 16/2007 r 4	1.3.2007
r 2	<i>deleted by 16/2007 r 5</i>	<i>1.3.2007</i>
r 3A	inserted by 314/2007 r 4	13.12.2007
r 3A(1)	varied by 24/2013 r 4(1)	10.3.2013
	varied by 21/2016 r 4(1), (2)	22.4.2016
r 3A(2)		
hospital	inserted by 24/2013 r 4(2)	10.3.2013
medical practitioner	inserted by 24/2013 r 4(2)	10.3.2013

	passenger transport inserted by 21/2016 r 4(3) service	22.4.2016
	passenger transport inserted by 21/2016 r 4(3) work	22.4.2016
	public passenger inserted by 21/2016 r 4(3) vehicle	22.4.2016
r 3B	inserted by 195/2011 r 4	21.8.2011
r 3C	inserted by 195/2011 r 5	21.8.2011
r 4A	inserted by 17/2013 r 4	4.3.2013
<b>r 4A(1)</b>	<b>varied by 348/2017 r 4(2)</b>	<b>19.12.2017</b>
<b>r 4A(4) and (5)</b>	<b>substituted by 348/2017 r 4(3)</b>	<b>19.12.2017</b>
<b>r 4A(6)—(8)</b>	<b>varied by 348/2017 r 4(1)</b>	<b>19.12.2017</b>
<b>r 4A(9)</b>	<b>varied by 348/2017 r 4(4)</b>	<b>19.12.2017</b>
<b>r 4A(14)</b>		
<b>surrendered item</b>	<b>varied by 348/2017 r 4(5)</b>	<b>19.12.2017</b>
r 5	inserted by 16/2007 r 6	1.3.2007
	deleted by 321/2017 r 4	5.3.2018—not incorporated

## Historical versions

1.3.2007  
13.12.2007  
21.8.2011  
4.3.2013  
10.3.2013  
22.4.2016