

South Australia

Sentencing Regulations 2018

under the *Sentencing Act 2017*

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Schedule 1—Revocation of *Criminal Law (Sentencing) Regulations 2014*

Legislative history

1—Short title

These regulations may be cited as the *Sentencing Regulations 2018*.

2—Commencement

These regulations will come into operation on the day on which the *Sentencing Act 2017* comes into operation.

3—Interpretation

In these regulations—

Act means the *Sentencing Act 2017*.

4—Prescribed authority

For the purposes of Part 3 Division 5 of the Act, the prescribed authority is the person for the time being performing the duties, or holding or acting in the position, of the Clinical Director, Forensic Mental Health Service South Australia.

5—Prosecutor may file list of additional charges (section 32)

- (1) Subject to subregulation (2), a police prosecutor is a person of a prescribed class for the purposes of section 32(4)(b) of the Act.
- (2) A police prosecutor may only sign a list of additional charges if—
 - (a) the charges do not relate to a major indictable offence; and
 - (b) the charges will not affect the prosecution of any offence by the DPP.

6—Prescribed modifications relating to sentencing discounts when ex officio information laid (section 40)

- (1) For the purposes of section 40(7) of the Act, section 40 applies in relation to proceedings that have been instituted in a superior court by the DPP laying an information ex officio in accordance with section 103 of the *Criminal Procedure Act 1921* with the following modifications:

Section 40(3)—delete subsection (3) and substitute:

- (3) This subsection applies to a court sentencing a defendant for an offence or offences in proceedings instituted in a superior court by the DPP laying an information ex officio in accordance with section 103 of the *Criminal Procedure Act 1921*—
- (a) if the relevant offence or offences have not been the subject of committal proceedings under Part 5 Division 3 of that Act—
- (i) the sentencing court may reduce the sentence that it would otherwise have imposed by up to 40% if the defendant pleads guilty to the relevant offence or offences during the period commencing immediately after the defendant's arraignment appearance in the superior court in relation to the relevant offence or offences and ending not more than 4 weeks after that arraignment; and
- (ii) the sentencing court may reduce the sentence that it would otherwise have imposed by up to 30% if the defendant pleads guilty to the relevant offence or offences more than 4 weeks after the defendant's arraignment appearance in the superior court in relation to the relevant offence or offences but on or before the day of the commencement of the defendant's trial for the relevant offence or offences; and
- (b) if the relevant offence or offences have been the subject of committal proceedings under Part 5 Division 3 of that Act but the Magistrates Court has rejected the information under section 115(2)(a) of that Act, the sentencing court may reduce the sentence that it would otherwise have imposed by up to 20%.
- (3a) In acting under subsection (3), the sentencing court must take into account—
- (a) when the defendant was provided with information, material or evidence by the prosecution in support of the relevant offence or offences charged (including the provision of a prosecution case statement that incorporates the relevant offence or offences); and

- (b) the time reasonably required for the defence to consider the information, material or evidence provided by the prosecution in support of the relevant offence or offences; and
 - (c) any other matter the court considers appropriate.
- (2) Despite subregulation (1), if, in proceedings referred to in that subregulation, the ex officio information also includes an offence or offences that were committed to the superior court for trial, the modifications prescribed under that subregulation do not apply to the sentencing of the defendant for that offence or those offences.

7—Dealing with surrendered items

- (1) For the purposes of sections 60(4), 92(4) and 101(3) of the Act, the Commissioner of Police must deal with a surrendered item in accordance with this regulation.
- (2) The Commissioner of Police must retain a surrendered item in a location determined by the Commissioner of Police until—
 - (a) the surrendered item is forfeited to the Crown under the Act 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.
- (3) If—
 - (a) the release of a person on licence that is subject to the condition under section 59(7) of the Act has been discharged or revoked; or
 - (b) a home detention order in respect of a person that is subject to the condition under section 72(1)(e) of the Act is discharged or revoked; or
 - (c) an intensive correction order in respect of a person that is subject to the condition under section 82(1)(e) of the Act is discharged or revoked; or
 - (d) a bond in respect of which a person has entered that is subject to the condition under section 96(2)(a) of the Act is discharged or revoked,the person may notify the Commissioner of Police of that fact.
- (4) If the condition referred to in paragraph (a), (b), (c) or (d) of subregulation (3) to which a person is subject is revoked, the person may notify the Commissioner of Police of that fact.
- (5) Subject to this regulation, if the Commissioner of Police is notified under subregulation (3) or (4), or otherwise becomes aware, that—
 - (a) the person is no longer subject to the condition referred to in paragraph (a), (b), (c) or (d) of subregulation (3) (as the case may be); or
 - (b) the person's release on licence or bond has been discharged or revoked, or the home detention order or intensive correction order to which the person was subject has been discharged or revoked,

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 item specified in the notice is to be returned to the person; and
 - (b) the location at which the surrendered item may be collected; and
 - (c) that the surrendered item 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 item 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 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,

and, if the Commissioner of Police does so refuse, the Commissioner of Police 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 paragraph (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 under 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 60(1), 92(2) or 101(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; or
 - (d) be transmitted by fax or email to a fax number or email address provided by the person.

- (14) In this regulation—

conditional release means—

- (a) a grant of bail under the *Bail Act 1985*; or
- (b) a bond under the Act, the *Criminal Law (Sentencing) Act 1988* or the *Criminal Law Consolidation Act 1935*; or
- (c) release on home detention under the Act or the *Criminal Law (Sentencing) Act 1988*; or
- (d) release on an intensive correction order under the Act; or
- (e) release on licence under the Act, the *Criminal Law (Sentencing) Act 1988* or the *Criminal Law Consolidation Act 1935*; or
- (f) release from prison on home detention or parole under the *Correctional Services Act 1982*; or
- (g) release on licence, on home detention 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 60(1) or 96(2)(a) of the Act.

8—Enforcement of order for restitution of property (section 126)

The prescribed fees for issuing, serving and executing an order under section 126(2)(b) of the Act are the sum of the following:

- (a) for the time spent in locating the property to be valued—an amount per hour equal to the amount per hour prescribed under the *Sheriff's Regulations 2005* in relation to the sheriff's attendance to execute an enforcement process;
- (b) for valuing the property—the actual costs reasonably incurred in causing the property to be valued;

- (c) for administrative work in issuing the order—an amount equal to the fee prescribed under the *Sheriff's Regulations 2005* in relation to receiving and entering a summons, notice, order or other document for service;
- (d) for serving the order—an amount equal to the fee prescribed under the *Sheriff's Regulations 2005* in relation to execution of a warrant;
- (e) if travelling expenses are incurred in issuing and serving the order—an amount equal to the amount prescribed under the *Sheriff's Regulations 2005* as an allowance for travelling expenses incurred in the service of a document or execution of a process.

Schedule 1—Revocation of *Criminal Law (Sentencing) Regulations 2014*

The *Criminal Law (Sentencing) Regulations 2014* are revoked.

Legislative history

Notes

- 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.

Principal regulations

| Year | No | Reference | Commencement |
|------|----|------------------------------|----------------|
| 2018 | 25 | <i>Gazette 6.2.2018 p644</i> | 30.4.2018: r 2 |