

South Australia

Fines Enforcement and Debt Recovery Regulations 2018

under the *Fines Enforcement and Debt Recovery Act 2017*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fines Enforcement and Debt Recovery Regulations 2018*.

2—Commencement

These regulations will come into operation on the day on which Part 2 of the *Fines Enforcement and Debt Recovery Act 2017* comes into operation.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Fines Enforcement and Debt Recovery Act 2017*;

Minister for Correctional Services means the Minister responsible for the administration of the *Correctional Services Act 1982*.

Part 2—Chief Recovery Officer

4—Annual Report (section 7 of Act)

- (1) For the purposes of section 7(2) of the Act, the annual report for a financial year must include the following information:
 - (a) the total amount of debt that was payable to the Chief Recovery Officer at the commencement of the financial year;
 - (b) the total amount of debt that became payable to the Chief Recovery Officer during the financial year;
 - (c) the total amount of debt that was paid to the Chief Recovery Officer during the financial year;

- (d) the total amount of debt that was waived by the Chief Recovery Officer during the financial year;
 - (e) the total amount of debt that was written off by the Chief Recovery Officer during the financial year;
 - (f) the total amount of debt that was payable to the Chief Recovery Officer at the end of the financial year, including—
 - (i) the total amount of debt subject to arrangements under sections 15, 16, 20 and 21 of the Act; and
 - (ii) the total amount of debt the payment of which has been deferred (whether because of an extension of time or other form of arrangement resulting in a later payment date); and
 - (iii) the total amount of debt subject to enforcement action under sections 19 and 22 of the Act;
 - (g) the total amount of debt that was paid during the financial year to a person—
 - (i) to whom powers or functions were delegated by the Chief Recovery Officer under section 5 of the Act during the financial year; and
 - (ii) who was not a public sector employee (within the meaning of the *Public Sector Act 2009*) for the period of that delegation.
- (2) Information in a report relating to a total amount of debt must be expressed as a sum of the debt's statutory components (with the amount of each statutory component shown in the report).
- (3) For the purposes of this regulation, a debt's *statutory components* are—
- (a) amounts owed as pecuniary sums under the Act; and
 - (b) amounts owed pursuant to enforcement determinations under section 22 of the Act; and
 - (c) amounts owed pursuant to arrangements under sections 15, 16, 20 and 21 of the Act (other than amounts referred to in paragraph (b)).

Part 3—Pecuniary sums and expiations fees

Division 1—Preliminary

5—Exception to expiation on arrangement or enforcement (section 9 of Act)

A debtor will not be taken to have expiated an offence or offences in accordance with section 9(3)(b) of the Act for the purposes of the following laws:

- (a) the *Sentencing Act 2017*;
- (b) the repealed *Criminal Law (Sentencing) Act 1988*;
- (c) the *Victims of Crime Act 2001*;
- (d) the *Young Offenders Act 1993*.

Division 2—Payment of pecuniary sums

6—Amounts unpaid or unrecovered for more than certain period (section 14 of Act)

- (1) For the purposes of section 14(1)(c) of the Act, the prescribed amount is \$99.
- (2) For the purposes of section 14(1)(d) of the Act, the prescribed amount is \$180.

7—Exemption from fee to enter arrangement (section 15 of Act)

A person who satisfies the Chief Recovery Officer that the person is suffering financial hardship such that the person cannot pay the fee required under section 15(1) of the Act to enter into a payment arrangement is exempt from the requirement to pay that fee.

8—Community service requirements in arrangements (section 15 of Act)

- (1) For the purposes of section 15(5)(f) of the Act, the following provisions apply in relation to community service under an arrangement entered into between the Chief Recovery Officer and a debtor:
 - (a) the number of hours of community service to be performed by the debtor is to be calculated at the rate of 7.5 hours for each \$200 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 arrangement must specify a period within which the community service is to be performed;
 - (d) the debtor 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;
 - (e) on reporting under paragraph (d), the debtor must be assigned to a community corrections officer by whom the debtor will be supervised while performing community service;
 - (f) the debtor 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 debtor is assigned may direct;
 - (g) in performing community service the debtor must carry out certain projects or tasks as the assigned community corrections officer reasonably requires;
 - (h) the debtor 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;
 - (i) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;

- (j) the debtor may not be required to perform community service at a time that would interfere with the debtor's remunerated employment or with a course of training or instruction relating to, or likely to assist the debtor in obtaining, remunerated employment, or that would cause unreasonable disruption of the debtor's commitments in caring for the debtor's dependants;
 - (k) the debtor may not be required to perform community service at a time that would cause the debtor to offend against a rule of a religion that the debtor practises;
 - (l) the attendance of the debtor at any educational or recreational course of instruction approved by the Minister for Correctional Services will be taken to be performance of community service;
 - (m) the debtor will not be remunerated for the performance of any community service pursuant to the order;
 - (n) the debtor must obey the lawful directions of the community corrections officer to whom the debtor is assigned.
- (2) For the purposes of section 15(12) of the Act, if a debtor complies with an arrangement under section 15 of the Act requiring the performance of community service, the amount of the pecuniary sum outstanding is to be reduced by \$200 for every 7.5 hours of community service performed by the debtor.

9—Arrangements with prescribed debtors (section 15 of Act)

For the purposes of section 15(8)(c) of the Act, a debtor who has previously—

- (a) failed to comply with an arrangement under section 15 of the Act resulting in the termination of the arrangement under section 15(15) of the Act; or
- (b) failed to comply with an arrangement under section 20 of the Act resulting in the termination of the arrangement under section 20(15) of the Act; or
- (c) failed to comply with an arrangement under section 9 of the *Expiation of Offences Act 1996* as in force immediately before the commencement of this regulation resulting in the termination of the arrangement under section 9(10) of that Act; or
- (d) failed to comply with an arrangement under section 70 of the repealed *Criminal Law (Sentencing) Act 1988* resulting in the termination of the arrangement under section 70(8) of that Act,

is prescribed.

10—Authority to obtain information (section 15 of Act)

For the purposes of section 15(8)(e) of the Act, an irrevocable authority to obtain financial and contact information about the debtor under that section must have effect (and may only be used by the Chief Recovery Officer) during the period that an amount due remains outstanding.

Division 3—Payment of expiation fees

11—Fee to enter arrangement (section 20 of Act)

- (1) For the purposes of section 20(1) of the Act, the fee to enter into an arrangement is \$19.10.
- (2) A person who satisfies the Chief Recovery Officer that the person is suffering financial hardship such that the person cannot pay the fee to enter into an arrangement under section 20(1) of the Act is, however, exempt from the fee.

12—Community service requirements in arrangements (section 20 of Act)

- (1) For the purposes of section 20(6)(f) of the Act, the following provisions apply in relation to community service under an arrangement entered into between the Chief 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 \$200 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 arrangement must specify a period within which the community service is to be performed;
 - (d) 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;
 - (e) on reporting under paragraph (d), the alleged offender must be assigned to a community corrections officer by whom the alleged offender will be supervised while performing community service;
 - (f) 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;
 - (g) in performing community service the alleged offender must carry out certain projects or tasks as the assigned community corrections officer reasonably requires;
 - (h) 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;
 - (i) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;
 - (j) the alleged offender may not be required to perform community service at a time that would interfere with the alleged offender's remunerated employment or with a course of training or instruction relating to, or likely to assist the alleged offender in obtaining, remunerated employment, or that would cause unreasonable disruption of the alleged offender's commitments in caring for the alleged offender's dependants;

- (k) the alleged offender may not be required to perform community service at a time that would cause the alleged offender to offend against a rule of a religion that the alleged offender practises;
 - (l) 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;
 - (m) the alleged offender will not be remunerated for the performance of any community service pursuant to the order;
 - (n) the alleged offender must obey the lawful directions of the community corrections officer to whom the alleged offender is assigned.
- (2) For the purposes of section 20(13) of the Act, if an alleged offender complies with an arrangement under section 20 of the Act requiring the performance of community service, the amount outstanding is to be reduced by \$200 for every 7.5 hours of community service performed by the alleged offender.

13—Arrangements with prescribed alleged offenders (section 20 of Act)

For the purposes of section 20(9)(c) of the Act, an alleged offender who has previously—

- (a) failed to comply with an arrangement under section 15 of the Act resulting in the termination of the arrangement under section 15(15) of the Act; or
- (b) failed to comply with an arrangement under section 20 of the Act resulting in the termination of the arrangement under section 20(15) of the Act; or
- (c) failed to comply with an arrangement under section 9 of the *Expiation of Offences Act 1996* as in force immediately before the commencement of this regulation resulting in the termination of the arrangement under section 9(10) of that Act; or
- (d) failed to comply with an arrangement under section 70 of the repealed *Criminal Law (Sentencing) Act 1988* resulting in the termination of the arrangement under section 70(8) of that Act,

is prescribed.

14—Authority to obtain information (section 20 of Act)

For the purposes of section 20(9)(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 Chief Recovery Officer) during the period that an amount due remains outstanding.

15—Exception to expiation on arrangement or enforcement (sections 20 and 22 of Act)

An alleged offender will not be taken to have expiated an offence or offences in accordance with sections 20(21) and 22(4) of the Act for the purposes of the following laws:

- (a) the *Sentencing Act 2017*;
- (b) the repealed *Criminal Law (Sentencing) Act 1988*;

- (c) the *Victims of Crime Act 2001*;
- (d) the *Young Offenders Act 1993*.

16—Enforcement determination fee (section 22 of Act)

- (1) For the purposes of section 22(2) of the Act, the fee payable by an issuing authority for the enforcement of an expiation notice is \$19.10.
- (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 22(2) of the Act.

17—Fee for application for revocation of enforcement determination (section 22 of Act)

- (1) For the purposes of section 22(6) of the Act, the fee for an application to the Chief Recovery Officer to revoke an enforcement determination is \$24.00.
- (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).

18—Notice of making, variation or revocation of enforcement determination (section 22 of Act)

- (1) For the purposes of section 22(16) 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 22(16) 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.

19—Amounts unpaid or unrecovered for more than certain period (section 26 of Act)

- (1) For the purposes of section 26(1)(a) of the Act, the prescribed amount is \$99.
- (2) For the purposes of section 26(1)(b) of the Act, the prescribed amount is \$180.

Division 4—Investigation powers

20—Disclosure of information to prescribed interstate authority (section 32 of Act)

For the purposes of section 32 of the Act—

- (a) the following particulars are prescribed:
 - (i) the debtor's or alleged offender's personal details;
 - (ii) the name and address of the debtor's or alleged offender's next of kin;
 - (iii) the details of the sum owed including a breakdown of the amounts owed specifying relevant dates and the offences to which the 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.

Part 4—Enforcement

Division 1—Enforcement action

21—Property exempt from seizure and sale (section 36 of Act)

For the purposes of section 36(3)(a) of the Act, household property excluded from being divisible among the creditors of a bankrupt under the *Bankruptcy Act 1996* of the Commonwealth is exempt from seizure and sale under section 36 of the Act.

Division 2—Failure of enforcement process

22—Prescribed unit (section 46 of Act)

For the purposes of section 46 of the Act, the prescribed unit is \$200.

23—Community service notice (section 46 of Act)

The following matters must be included in a notice given under section 46(4) of the Act:

- (a) details of the court that made the order for community service under section 46(1) of the Act;
- (b) details of the order including—
 - (i) the name and address of the debtor or alleged offender; and
 - (ii) the monetary amount to which the order relates; and
 - (iii) the period within which the community service is to be performed; and
 - (iv) the place to which the debtor or alleged offender is to report within 2 working days of the order; and
 - (v) that the debtor or alleged offender is required to 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 debtor or alleged offender is assigned may direct; and
 - (vi) that the debtor or alleged offender must obey the lawful directions of the community corrections officer to whom the debtor or alleged offender is assigned;
- (c) that a failure to comply with the order may result in the debtor or alleged offender being imprisoned for a period of up to 12 months calculated, in the case of a failure to perform a number of hours of community service, on the basis of 1 day of imprisonment for each 7.5 hours of unperformed hours of community service.

Part 5—Miscellaneous

24—Fees

The fees set out in Schedule 2 are payable as prescribed in the Schedule.

25—Transitional provisions

- (1) Section 14 of the *Expiation of Offences Act 1996* 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 before 3 February 2014.
- (2) Section 14 of the *Expiation of Offences Act 1996* as in force immediately before the commencement day continues to apply in relation to an application made under that section before that day.
- (3) The Act applies in relation to an enforcement order made before 3 February 2014 under section 13 of the *Expiation of Offences Act 1996* as if—
 - (a) the order were an enforcement determination made by the Chief Recovery Officer; and

- (b) in a case where the alleged offender has been given notice of the enforcement order—notice of the determination was given to the alleged offender under section 22 of the Act (as in force after the commencement day) on the day on which notice of the order was so given.
- (4) In this regulation—
commencement day means the day on which Part 4 of the Act comes into operation.

Schedule 1—Forms

1—Seizure and sale of assets (section 36 of Act)

For the purposes of section 36(5) of the Act, the prescribed form is a form that complies with the following requirements:

- (a) the form must include a heading identifying it as a notice under section 36(5) of the Act;
- (b) the form must specify the Chief Recovery Officer's determination under section 36 of the Act;
- (c) the form must specify—
 - (i) the number of items of property that must be produced; and
 - (ii) a general description of each item of property to the extent that the debtor or alleged offender can reasonably identify each item of property that must be produced;
- (d) the form must direct the debtor or alleged offender to produce the specified items of property and specify—
 - (i) the date and time at which the debtor or alleged offender must produce the items of property; and
 - (ii) the place at which the debtor or alleged offender must produce the items of property;
- (e) the form must include a statement of the choices available to the debtor or alleged offender, including but not limited to an option for the debtor or alleged offender to contact the Chief Recovery Officer to arrange an alternate occasion on which to produce the items of property;
- (f) the form must give notice of section 36(6) of the Act.

2—Impounding of vehicle (section 41 of Act)

For the purposes of section 41(6)(a) of the Act, the prescribed form is a form that complies with the following requirements:

- (a) the form must include a heading identifying it as a notice under section 41(6)(a) of the Act;
- (b) the form must specify the Chief Recovery Officer's determination under section 41 of the Act;
- (c) the form must specify the following in relation to the vehicle the subject of the determination:

- (i) the registration number;
- (ii) a general description of the vehicle;
- (d) the form must direct the owner to produce the vehicle and specify—
 - (i) the date and time at which the owner must produce the vehicle; and
 - (ii) the place at which the owner must produce the vehicle;
- (e) the form must include a statement of the choices available to the owner, including but not limited to an option for the owner to contact the Chief Recovery Officer to arrange an alternate occasion on which to produce the vehicle;
- (f) the form must include a statement that the vehicle is to be produced for the purposes of the Chief Recovery Officer exercising a power under the Act;
- (g) the form must give notice of section 41(7) of the Act.

Schedule 2—Fees

1	Fee payable by issuing authority under section 9(2) of the Act	\$19.10
2	Fee payable by debtor under section 15(1) of the Act	\$19.10
3	Reminder notice fee under section 18(3) of the Act	\$53.50
4	Fee payable by debtor or alleged offender under section 38(5) of the Act	\$19.10
5	Fee payable by debtor or alleged offender under section 39(7) of the Act	\$19.10
6	Fee payable by debtor or alleged offender under section 40(5) of the Act	\$19.10

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	23	<i>Gazette 6.2.2018 p631</i>	30.4.2018: r 2