

CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987
No. 56

NEW SOUTH WALES



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CHILDREN (COMMUNITY SERVICE ORDERS) ACT 1987 No. 56

NEW SOUTH WALES



Act No. 56, 1987

An Act with respect to the performance of community service work by children and other young persons who have been found guilty of criminal offences. [Assented to 29 May 1987]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Children (Community Service Orders) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"assigned officer", in relation to a children's community service order, means the officer or other person for the time being assigned by the Director-General under section 16 in respect of the administration of the order;

"authorised Magistrate" has the same meaning as it has in the Children's Court Act 1987;

"child" means a person who is under the age of 18 years;

"children's community service order" means an order under section 5 whereby a court requires a person to perform community service work;

"Children's Court" means the Children's Court of New South Wales constituted by the Children's Court Act 1987;

"community service work" means unpaid work approved by the Minister or unpaid work of a class or description so approved;

"Department" means the Department of Youth and Community Services;

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“Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“imprisonment” includes penal servitude;

“officer” means an officer or temporary employee, within the meaning of the Public Service Act 1979, employed in the Department;

“regulation” means a regulation made under this Act;

“supervisor” means a person appointed pursuant to the regulations to supervise the performance of community service work by persons in respect of whom children’s community service orders are in force;

“work” includes any form of work, service or activity.

Application

4. This Act applies to a person—

- (a) who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence by, a court;
- (b) who was a child when the offence was committed; and
- (c) who was under the age of 21 years when charged before the court with the offence.

PART 2**MAKING OF CHILDREN’S COMMUNITY SERVICE ORDERS****Making of children’s community service orders**

5. (1) If, in dealing with a person to whom this Act applies, a court would, but for this section—

- (a) make an order imposing a sentence of imprisonment on the person; or
- (b) make an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987 in respect of the person,

the court may, instead of making that order, make an order requiring the person to perform community service work.

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(2) A court that is exercising the functions of the Children's Court under Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987 shall not exercise its powers under this section otherwise than in accordance with the provisions of that Division.

(3) A court, other than a court that is exercising the functions of the Children's Court under Division 4 of Part 3 of the Children (Criminal Proceedings) Act 1987, shall not exercise its powers under this section in relation to an offence if it has given or made, or proposes to give or make, a direction or order under section 554 (2), 556A (1) or 558 (1) of the Crimes Act 1900 in relation to the same offence.

Explanation of nature and effect of proposed children's community service orders

6. If a court proposes to make a children's community service order in respect of a person, it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by the person—

- (a) the purpose and effect of the proposed order;
- (b) the consequences that may follow if the person fails to comply with the proposed order or any requirement made by or under this Act in respect of the proposed order; and
- (c) that the proposed order may be amended or revoked.

Children's community service orders not to be made except with consent

7. A court shall not exercise its powers under section 5 in respect of a person unless the person consents to the court's exercising those powers.

Children's community service orders not to be made in respect of children under 14 years

8. A court shall not exercise its powers under section 5 in respect of a child who is under the age of 14 years unless it is satisfied, having regard to the maturity of the child, that the child is capable of complying with a children's community service order.

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Children's community service orders not to be made unless work is available

9. A court shall not exercise its powers under section 5 in respect of a person unless—

- (a) the court has been notified by an officer, in person or by writing, that arrangements exist for persons who reside in the area in which the person resides or intends to reside to perform community service work under a children's community service order; and
- (b) the court is satisfied (after considering a report from an officer about the person and the person's circumstances and, if it thinks necessary, after hearing evidence from an officer) that—
 - (i) the person is a suitable person to perform community service work under a children's community service order; and
 - (ii) if such an order is made, community service work can be provided for the person under the arrangements referred to in paragraph (a).

Children's community service orders may run concurrently

10. More than one children's community service order may be made by one or more courts in respect of the same person so as to be in force at the same time.

Conditions that may be attached to children's community service orders

11. If a court makes a children's community service order, it may specify in the order conditions, not inconsistent with this Act or the regulations, to be complied with by the person in respect of whom the order is made while the order remains in force.

Preparation and service of copies of children's community service orders

12. (1) A court shall, as soon as practicable after making a children's community service order, cause the order to be reduced to writing.

(2) The court shall cause a copy of a children's community service order—

- (a) to be served on the person in respect of whom the order is made before that person leaves the precincts of the court;
- (b) to be sent to the Director-General; and

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- (c) in the case of a court other than the Children's Court—to be sent to the Registrar of the Children's Court together with such documents and information as it considers likely to be of assistance to the Children's Court.

(3) The failure of the court to cause a copy of a children's community service order to be served on or sent to a person in accordance with subsection (2) does not invalidate the order.

Number of hours of community service work

13. (1) When a court makes a children's community service order, it shall specify in the order the number of hours of community service work to be performed by the person in respect of whom the order is made.

(2) The number of hours of community service work to be performed by a person in respect of whom a children's community service order is made shall not exceed—

- (a) the number of hours prescribed by the regulations in respect of the offence or class of offences in respect of which the order is made; or
- (b) if no such number is so prescribed—100 hours.

(3) The court may specify that the hours of community service work to be performed by a person in respect of whom a children's community service order is made shall be concurrent with, or additional to, those specified in any other such order made in respect of that person, but so that the sum of—

- (a) the number of hours of work remaining to be performed, at any time, concurrently under the orders; and
- (b) the number of hours of work remaining to be performed, at any time, otherwise than concurrently, under the orders,

does not exceed 100 hours.

Place, etc., and time for presentation for work

14. When a court makes a children's community service order in respect of a person, it shall specify in the order—

- (a) a place at which or a person to whom the person shall present himself or herself for the purpose of enabling the administration of the order to be commenced;
- (b) a period within which the person shall so present himself or herself; and

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- (c) the area within which the person shall perform community service work.
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PART 3

ADMINISTRATION OF CHILDREN'S COMMUNITY SERVICE
ORDERS

Children's Court to supervise the administration of children's community service orders

15. The Children's Court shall be the supervising court in respect of a children's community service order, whether or not the order was made by the Children's Court.

Assignment of officer by Director-General

16. (1) On receipt of a copy of a children's community service order sent to the Director-General in accordance with section 12 (2), the Director-General shall assign an officer, or, where the regulations so provide, a person other than an officer, in respect of the administration of the order.

(2) The Director-General may, from time to time, assign another officer or another person in place of the officer or person previously assigned.

Obligations of persons subject to children's community service orders

17. A person in respect of whom a children's community service order is in force shall, in addition to complying with any other requirement made by or under this Act in respect of the order—

- (a) perform, for the number of hours specified in the order, such community service work as the assigned officer directs at such times as the assigned officer directs;
- (b) perform that work in a satisfactory manner;
- (c) while performing that work, comply with any reasonable direction of the assigned officer or a supervisor; and
- (d) inform the assigned officer of any change in the person's place of residence.

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Directions

18. (1) The assigned officer shall not, under section 17, direct a person in respect of whom a children's community service order is in force to perform work of a kind usually performed for fee or reward on a regular basis.

(2) In giving directions to a person under section 17, the assigned officer and a supervisor shall, so far as is reasonably practicable—

- (a) take into consideration the person's capacities and interests, having regard to the person's physical, psychological, behavioural, intellectual and cultural characteristics; and
- (b) avoid any conflict with the person's religious beliefs, if any, or the times, if any, at which the person usually works or attends a school or other educational establishment from time to time.

Duration of children's community service orders

19. A children's community service order shall remain in force until—

- (a) the person in respect of whom the order is made has performed community service work, in accordance with any requirement made by or under this Act in respect of the order, for the number of hours specified in the order;
- (b) the expiration of the period of 12 months commencing on the date on which the order was made or, if that period is extended pursuant to section 20, the expiration of that period as so extended; or
- (c) the order is revoked under section 21, 22 or 26,

whichever first occurs.

PART 4

AMENDMENT AND REVOCATION OF CHILDREN'S COMMUNITY SERVICE ORDERS

Amendment of children's community service orders

20. (1) If, on the application of—

- (a) the person in respect of whom a children's community service order is in force; or

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(b) the assigned officer,

it appears to the Children's Court that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to do so, the Children's Court may extend the period for which the order is to remain in force.

(2) If, on the application of—

(a) the person in respect of whom a children's community service order is in force; or

(b) the assigned officer,

the Children's Court is satisfied that the person has changed or proposes to change his or her place of residence or that other sufficient reasons exist, the Children's Court may amend the order by substituting another area for that specified in the order as the area within which the person shall perform community service work.

(3) The Children's Court shall not amend a children's community service order in force in respect of a person unless—

(a) it has been notified by an officer, in person or by writing, that arrangements exist for persons who reside in the area in which the person resides or intends to reside to perform community service work under a children's community service order; and

(b) it is satisfied that, if such an order is made, community service work can be provided for the person under the arrangements referred to in paragraph (a).

Revocation, etc., of children's community service orders on application

21. (1) If, on the application of—

(a) the person in respect of whom a children's community service order is in force; or

(b) the assigned officer,

it appears to the Children's Court that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to do so, the Children's Court may—

(c) in the case of an order made by the Children's Court—

(i) revoke the order; or

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(ii) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the Children's Court had the order not been made; or

(d) in the case of an order made by some other court, subject to the Bail Act 1978, commit the person to custody until the person can appear or be brought before that other court, whether or not that other court is constituted by the same person as that by whom it was constituted when the order was made.

(2) If, pursuant to subsection (1) (d), a person appears or is brought before a court that made a children's community service order in respect of the person, the court may—

(a) revoke the order; or

(b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the court had the order not been made.

Revocation of children's community service orders on being dealt with for other offences

22. (1) When a person in respect of whom a children's community service order is in force appears before a court (being the same court as, or a court of higher jurisdiction than, the court that made the order) to be dealt with in respect of an offence other than the offence in respect of which the order was made, the court may—

(a) revoke the order; or

(b) revoke the order and deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the court that made the order had the order not been made.

(2) For the purposes of subsection (1), the Children's Court and a Local Court shall be the same as each other.

Issue of summons or warrant—applications under sec. 20 or 21

23. (1) If an application in respect of a person is made to the Children's Court under section 20 or 21 by the assigned officer, the Children's Court—

(a) may issue a summons for the appearance before it of the person; and

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(b) if the person does not appear in answer to the summons—may issue a warrant directing the arrest of the person.

(2) An officer or a member of the police force may arrest a person in respect of whom a warrant has been issued under this section, whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

PART 5

ENFORCEMENT OF CHILDREN'S COMMUNITY SERVICE
ORDERS

Breach of requirements of children's community service orders

24. (1) If a person in respect of whom a children's community service order is in force fails, without reasonable excuse, to comply with the order or with any requirement made by or under this Act in respect of the order, the person shall be guilty of an offence.

(2) Proceedings for an offence under this section in respect of a children's community service order shall be brought in accordance with section 25.

(3) Notwithstanding section 56 (1) of the Justices Act 1902, proceedings for an offence under this section in respect of a children's community service order shall not be commenced at any time later than one month after the order ceases to be in force.

Issue of summons or warrant—failure to comply with children's community service orders

25. (1) If the assigned officer informs an authorised justice, on oath, that a person in respect of whom a children's community service order is in force has failed, without reasonable excuse, to comply with the order or with any requirement made by or under this Act in respect of the order, the authorised justice—

- (a) may issue a summons for the appearance before the Children's Court of the person; and
- (b) if the person does not appear in answer to the summons—may issue a warrant directing the arrest of the person.

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(2) An officer or a member of the police force may arrest a person in respect of whom a warrant has been issued under this section, whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

(3) In this section—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice employed in the Local Courts Administration, Attorney General’s Department.

Breach of children’s community service orders—how dealt with

26. (1) If the Children’s Court finds a person guilty of an offence under section 24, it may—

- (a) without prejudice to the continuation in force of the children’s community service order, impose on the person a fine not exceeding \$250;
- (b) if the order was made by the Children’s Court, deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the Children’s Court had the order not been made and, unless the order has ceased to be in force, revoke the order;
- (c) if the order was made by some other court, subject to the Bail Act 1978, commit the person to custody until the person can appear or be brought before that other court, whether or not that other court is constituted by the same person as that by whom it was constituted when the order was made; or
- (d) take no action.

(2) If, pursuant to subsection (1) (c), a person is to appear or is to be brought before some other court, the Children’s Court shall send to the other court a certificate of its finding in respect of the offence of which it has found the person guilty (being a certificate signed by a member of the Children’s Court or by an authorised Magistrate) together with such documents and information as the Children’s Court considers likely to be of assistance to the other court.

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(3) If, pursuant to subsection (1) (c), a person appears or is brought before a court that made a children's community service order in respect of the person, the court may, if it is satisfied that the person is guilty of an offence under section 24 (1)—

- (a) without prejudice to the continuation in force of the order, impose on the person a fine not exceeding \$250;
- (b) deal with the person, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the court had the order not been made and, unless the order has ceased to be in force, revoke the order; or
- (c) take no action.

(4) In proceedings before the District Court or the Supreme Court under this section, any question as to whether a person has failed to comply with a requirement of a children's community service order, or with a requirement made by or under this Act in respect of the order, shall be determined by the judge and not by the verdict of a jury.

PART 6

MISCELLANEOUS

Notification of amendment or revocation of children's community service orders

27. If a court—

- (a) extends the period during which a children's community service order is to remain in force;
- (b) amends a children's community service order; or
- (c) revokes a children's community service order,

the court shall cause notice of the extension, amendment or revocation to be sent to the Director-General and to the assigned officer and, in the case of a court other than the Children's Court, to the Registrar of the Children's Court.

*Children (Community Service Orders) 1987***Subsequent dealing—children's community service orders to be taken into account**

28. (1) If a person in respect of whom a children's community service order is made is subsequently dealt with by a court for the offence in respect of which the order was made, the court, in so dealing with the person, shall take into account—

- (a) the fact that the order was made;
- (b) any thing done under the order; and
- (c) the number of hours of community service work performed by the person under the order.

(2) If a person in respect of whom a children's community service order is made is subsequently dealt with by a court for the offence in respect of which the order was made, the person shall be deemed to have a right of appeal against the manner in which the person is dealt with—

- (a) in the case of a decision of the Children's Court or a Local Court—under section 122 (1) of the Justices Act 1902 as if the person were a person who, for an offence, has, by the conviction of a justice or justices founded on an Act, been adjudged to be punished; or
- (b) in the case of a decision of the District Court or the Supreme Court—under section 5 (1) (other than paragraph (a) or (b)) of the Criminal Appeal Act 1912 as if—
 - (i) the person were a person convicted on indictment; and
 - (ii) the manner in which the person is dealt with were a sentence passed on his or her conviction.

Regulations

29. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the circumstances in which a person other than an officer may be assigned by the Director-General in respect of the administration of a children's community service order;
- (b) the requirements to be complied with by persons in respect of whom children's community service orders are in force;

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- (c) the appointment and payment of supervisors in respect of children's community service orders to supervise persons in the performance of community service work;
 - (d) the conduct of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force;
 - (e) the health and safety of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force;
 - (f) the maximum number of hours of community service work that persons in respect of whom children's community service orders are in force may be required to perform on any one day;
 - (g) the periods to be included or excluded in computing the number of hours of community service work performed by persons in respect of whom children's community service orders are in force;
 - (h) travelling and transport arrangements to be made for persons performing community service work; and
 - (i) the payment of travelling and other expenses in connection with the performance of community service work.
- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.