

**CHILDREN (COMMUNITY SERVICE ORDERS) (FINE
DEFAULT) AMENDMENT ACT 1987 No. 265**

NEW SOUTH WALES



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**CHILDREN (COMMUNITY SERVICE ORDERS) (FINE DEFAULT)
AMENDMENT ACT 1987 No. 265**

NEW SOUTH WALES



Act No. 265, 1987

An Act to amend the Children (Community Service Orders) Act 1987 with respect to the performance of community service work by certain fine defaulters, and in other respects. [Assented to 16 December 1987]

*Children (Community Service Orders) (Fine Default) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

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

Commencement

2. This Act shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 56, 1987

3. The Children (Community Service Orders) Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (Interpretation)—**(a) Section 3, definition of “assigned officer”—**

After “order” where secondly occurring, insert “or the person exercising or performing, in accordance with the regulations, the powers, authorities, duties and functions of the officer or person so assigned”.

(b) Section 3, definition of “children’s community service order”—

(i) After “section 5”, insert “or 5A”.

(ii) After “court”, insert “or a prescribed officer”.

(c) Section 3 (2)—

At the end of section 3, insert:

(2) In so far as a provision of this Act applies to a person who, in accordance with a children’s community service order, is working off any unpaid amount referred to in section 5A, a reference in that provision to the offence in respect of which the order was made is a reference to the offence (whether found to have been committed or not) that resulted in the obligation to pay the amount concerned.

(2) Section 5A—

After section 5, insert:

Community service work in default of payment of fine

5A. (1) If—

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- (a) it is adjudged by a conviction or order in proceedings before the Children's Court, or in proceedings before a Local Court in respect of a person to whom this Act applies, that a fine, penalty, costs or other amount of money be paid; or
- (b) an enforcement order is made against a person—
 - (i) who was a child at the time the alleged offence to which the order relates was committed; and
 - (ii) who is under the age of 21 years, under Division 2 of Part IVB of the Justices Act 1902 requiring payment of a fine, penalty, costs or other amount of money,
 and on expiry of the time allowed for payment of any such fine, penalty, costs or other amount of money any amount remains unpaid, the prescribed officer shall, except as provided by subsection (2) and section 8, make an order in the prescribed form requiring the person to perform community service work in order to work off the unpaid amount.
- (2) Such an order shall not be made—
 - (a) in respect of a person already under detention at a detention centre within the meaning of the Children (Detention Centres) Act 1987;
 - (b) in respect of any fine, penalty, costs or other amount of money payable as a consequence of—
 - (i) an offence under the Motor Traffic Act 1909 or an offence prescribed for the purposes of section 18B of that Act; or
 - (ii) an offence under any prescribed provision of an Act or a statutory instrument,
 unless the prescribed officer has been otherwise notified in accordance with the regulations; or
 - (c) in such circumstances as may be prescribed for the purposes of this subsection.
- (3) Section 8 (**Children's community service orders not to be made in respect of children under 14 years**)—
 - (a) Omit "A court shall not exercise its powers under section 5", insert instead "A children's community service order shall not be made".
 - (b) Omit "it", insert instead "the court or prescribed officer making the order".

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- (4) Section 10 (**Children's community service orders may run concurrently**)—
 After "courts", insert "or prescribed officers".
- (5) Section 11 (**Conditions that may be attached to children's community service orders**)—
 Omit "If a court makes a children's community service order, it", insert instead "When a children's community service order is made, the court or prescribed officer making the order".
- (6) Section 12 (**Preparation and service of copies of children's community service orders**)—
- (a) Section 12 (1)—
 Omit "A court shall, as soon as practicable after making a children's community service order", insert instead "A court which makes a children's community service order shall, as soon as practicable after making the order".
- (b) Section 12 (3), (4)—
 Omit section 12 (3), insert instead:
- (3) A prescribed officer who makes a children's community service order shall—
- (a) cause a copy of the order to be served in accordance with the regulations on the person in respect of whom the order is made; and
- (b) cause copies of the order to be sent to the Director-General and to a Registrar of the Children's Court.
- (4) The failure of a court or a prescribed officer to cause a copy of a children's community service order to be served on or sent to a person in accordance with this section does not invalidate the order.
- (7) Section 13 (**Number of hours of community service work**)—
- (a) Section 13 (1)—
 Omit "When a court makes a children's community service order, it", insert instead "When a children's community service order is made, the court or prescribed officer making the order".
- (b) Section 13 (2)—
 After "made" where firstly occurring, insert "by a court".
- (c) Section 13 (2A), (2B)—
 After section 13 (2), insert:

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(2A) 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 by a prescribed officer is—

- (a) if the amount unpaid in respect of the relevant fine, penalty, costs or other amount is not more than 2 prescribed units—8 hours;
- (b) if the amount so unpaid is more than 2 prescribed units but not more than 3 prescribed units—12 hours; or
- (c) if the amount so unpaid is more than 3 prescribed units—4 hours for each such unit of the amount or part of each such unit,

but so that the number of hours does not in any case exceed 100 hours.

(2B) For the purposes of subsection (2A), the prescribed unit is \$50 (or, if another amount is prescribed for those purposes, the amount so prescribed).

(8) Section 14 (**Place etc. and time for presentation for work**)—

Omit "When a court makes a children's community service order in respect of a person, it", insert instead "When a children's community service order is made, the court or prescribed officer making the order".

(9) Section 16 (**Assignment of officer by Director-General**)—

(a) Section 16 (1)—

After "section 12 (2)", insert "or (3)".

(b) Section 16 (2)—

Omit the subsection.

(10) Section 19 (**Duration of children's community service orders**)—

Section 19 (c)—

Omit the paragraph, insert instead:

- (c) the order is revoked or considered satisfied under this Act,

(11) Section 21 (**Revocation etc. of children's community service orders on application**)—

(a) Section 21 (1) (a)—

After "order", insert "made by a court".

(b) Section 21 (3), (4)—

After section 21 (2), insert:

- (3) If, on the application of—

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- (a) the person in respect of whom a children's community service order made by a prescribed officer 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) revoke the order; or
- (d) revoke the order and deal with the person, for the offence in respect of which the order was made—
 - (i) by making a children's community service order in respect of the person; or
 - (ii) by making an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987,
 or in any manner in which the person could have been dealt with—
 - (iii) in the case of an offence to which section 84A of the Justices Act 1902 applies—by a Local Court; or
 - (iv) in any other case—by the Children's Court, in proceedings before the Court for such an offence.

(4) Section 34 of the Children (Criminal Proceedings) Act 1987 does not apply to the making of a children's community service order, or an order under section 33 (1) (g) of that Act, in accordance with subsection (3) (d).

(12) Section 22 (**Revocation of children's community service order on being dealt with for other offences**)—

- (a) Section 22 (1)—

After "order" where firstly occurring, insert "made by a court".

- (b) Section 22 (3), (4)—

After section 22 (2), insert:

(3) When a person in respect of whom a children's community service order made by a prescribed officer is in force appears before a court to be dealt with for 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—
 - (i) by making a children's community service order in respect of the person; or

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(ii) by making an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987,

or in any manner in which the person could have been dealt with—

(iii) in the case of an offence to which section 84A of the Justices Act 1902 applies—by a Local Court; or

(iv) in any other case—by the Children's Court,

in proceedings before the Court for such an offence.

(4) Section 34 of the Children (Criminal Proceedings) Act 1987 does not apply to the making of a children's community service order, or an order under section 33 (1) (g) of that Act, in accordance with subsection (3) (b).

(13) Sections 22A, 22B—

After section 22, insert:

Satisfaction of certain orders by payment

22A. If a person who is the subject of a children's community service order made by a prescribed officer—

(a) which is in force; and

(b) under which the person is required to perform community service work to work off an unpaid amount referred to in section 5A (1),

makes payment, as prescribed, of—

(c) that unpaid amount; or

(d) the unsatisfied balance (taking into account the extent to which the unpaid amount has been worked off) of that amount,

as the case requires, the order shall be considered satisfied.

Satisfaction of certain orders by detention

22B. (1) If a person in respect of whom a children's community service order made by a prescribed officer is in force is detained in a detention centre pursuant to a detention order within the meaning of the Children (Detention Centres) Act 1987, the person shall notify the assigned officer of the fact.

(2) The order shall be considered satisfied on notification being given to the assigned officer.

*Children (Community Service Orders) (Fine Default) Amendment 1987*SCHEDULE 1—AMENDMENTS—*continued*(14) Section 26 (**Breach of children's community service orders—how dealt with**)—

(a) Section 26 (1) (c)—

Omit “or” where lastly occurring.

(b) Section 26 (1) (d), (e)—

Omit section 26 (1) (d), insert instead:

(d) if the order was made by a prescribed officer, deal with the person, for the offence in respect of which the order was made—

(i) by making a children's community service order in respect of the person; or

(ii) by making an order under section 33 (1) (g) of the Children (Criminal Proceedings) Act 1987,

or in any manner in which the person could have been dealt with—

(iii) in the case of an offence to which section 84A of the Justices Act 1902 applies—by a Local Court; or

(iv) in any other case—by the Children's Court,

in proceedings before the Court for such an offence; or

(e) take no action.

(c) Section 26 (1A)—

After section 26 (1), insert:

(1A) Section 34 of the Children (Criminal Proceedings) Act 1987 does not apply to the making of a children's community service order, or an order under section 33 (1) (g) of that Act, in accordance with subsection (1) (d).

(15) Section 29 (**Regulations**)—

Section 29 (1) (b1), (b2)—

After section 29 (1) (b), insert:

(b1) providing for the exercise and performance, in such circumstances (if any) as the regulations may prescribe, of the powers, authorities, duties and functions of assigned officers by other persons;

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- (b2) the service of documents under this Act and any circumstances in which service is to be treated as having been effected;