COMMUNITY SERVICE ORDERS ACT, 1979, No. 192

New South Wales

ANNO VICESIMO OCTAVO

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Act No. 192, 1979.

An Act to make provision with respect to the performance of certain unpaid work by persons convicted of offences. [Assented to, 21st December, 1979.]

See also Bail (Community Service Orders) Amendment Act, 1979, and Community Service Orders (Amendment) Act, 1979.

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 :—

Short title.

1. This Act may be cited as the "Community Service Orders Act, 1979".

Commencement.

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

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be 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 community service order, means the probation officer or other person for the time being assigned, under section 13, by the Commission in respect of the administration of the order;

"Commission" means the Corrective Services Commission of New South Wales constituted under the Prisons Act, 1952;

"community service order" means an order made under section 4 (1);

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

"conviction" includes a finding of guilt;

"imprisonment" includes penal servitude;

"justice" means a Justice of the Peace;

"probation officer" means a probation and parole officer employed in the Department of Corrective Services;

"regulations" means regulations 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 community service orders are in force;

"work" includes any form of work, service or activity.

Community service orders in respect of convicted persons.

4. (1) Where a person of or over 18 years of age is before a court for sentencing after being convicted of an offence punishable by imprisonment, whether or not it is also punishable by a fine, the court may, instead of imposing a penalty of imprisonment and whether or not it imposes any such fine, make an order requiring the person to perform community service work for a number of hours not exceeding the number of hours prescribed in respect of the class of offences to which the offence belongs.

(2) The power of a court under subsection (1) may be exercised only subject to and in accordance with this Act.

(3) Where a court, in respect of a person convicted of an offence, makes a community service order in respect of the offence, the court may, in addition, do any one or more of the following :—

(a) give or make a direction or an order under section 437 (1), 438 (1) or 554 (3) of the Crimes Act, 1900, in respect of the offence;

(b) impose any disqualification authorised under any law on the person in respect of the offence;

(c) order the forfeiture of any property authorised under any law to be forfeited in respect of the offence.

(4) More than one 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.

(5) This section applies to a person who has been convicted of an offence before the date of commencement of this section but has not, before that date, been sentenced for the offence.

Community service order not to be made in addition to certain other orders, etc.

5. Where a court, in respect of a person convicted of an offence—

(a) sentences the person to a term of imprisonment in respect of the offence; or

(b) gives or makes a direction or an order under section 554 (2), 556A (1) or 558 (1) of the Crimes Act, 1900, in respect of the offence,

the court shall not, in addition, make a community service order in respect of the offence.

Circumstances in which a community service order may be made.

6. A court shall not make a community service order in respect of a person unless the person consents to the making of the order and the court—

(a) has been notified by a probation officer or a person authorised in accordance with the regulations that arrangements exist for persons who reside in the area in which the firstmentioned person resides or intends to reside to perform community service work under such an order; and

(b) is satisfied, after considering a report from a probation officer or a person so authorised about the firstmentioned person and his circumstances, and, if the court thinks necessary, hearing evidence from a probation officer or a person so authorised—

(i) that the firstmentioned person is a suitable person to perform community service work under such an order; and

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

7. (1) Where a court makes a community service order, the court shall specify in the order the number of hours, not exceeding 300 hours, of community service work to be performed by the person in respect of whom the order is made.

Number of hours of community service work.

(2) A court may specify that the hours of community service work to be performed by a person in respect of whom a 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 300 hours.

8. (1) Where a court makes a community service order in respect of a person, it shall specify in the order a court of petty sessions, being—

Supervising court.

(a) the court of petty sessions nearest to the place where the person resides or intends to reside; or

(b) the court of petty sessions it deems most convenient in the circumstances,

to be the supervising court in respect of the order.

(2) A court of petty sessions specified in an order as referred to in subsection (1) or, where another court of petty sessions is substituted for that court pursuant to section 22, the court so substituted, shall, for the purposes of this Act, be the supervising court in respect of the order.

Place, etc., and time for presentation for work.

9. Where a court makes a community service order, it shall specify in the order—

(a) a place at which or a person to whom the person in respect of whom the order is made shall present himself, in person, for the purpose of enabling the administration of the order to be commenced; and

(b) a period within which the person in respect of whom the order is made shall so present himself.

Conditions.

10. Where a court makes a 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 during such period as the order remains in force.

Explanation of nature and effect of proposed order.

11. Where a court proposes to make a community service order it shall, before making the order, explain or cause to be explained to the person in respect of whom it is proposed to make the order, in language likely to be readily understood by him—

(a) the purpose and effect of the proposed order;

(b) the consequences that may follow if he fails to comply with the proposed order or any requirement made by or under this Act or the regulations in respect of the proposed order; and

(c) that the proposed order may be amended or revoked.

Preparation and service of a copy of an order.

12. (1) A court which makes a community service order shall, as soon as practicable after the order is made, cause the order to be reduced to writing in the prescribed form.

(2) The court shall cause a copy of a community service order reduced to writing under subsection (1)—

(a) to be served on the person in respect of whom the order is made before he leaves the precincts of the court;

(b) to be sent to the Commission; and

(c) where the court is not the supervising court, to be sent to the clerk of the supervising court together with such documents and information relating to the person in respect of whom and the offence in respect of which the order is made as it considers likely to be of assistance to the supervising court.

(3) The failure of a court to cause a copy of a community service order to be served on or sent to a person pursuant to subsection (2) does not invalidate the order.

Assignment of officer by the Commission.

13. (1) On receipt of a copy of a community service order sent to it under section 12 (2), the Commission shall assign a probation officer or, where the regulations so provide, a person other than a probation officer, in respect of the administration of the order.

(2) The Commission may, from time to time, assign another probation officer or another person who may be assigned under subsection (1) in place of the probation officer or person previously assigned.

Obligations of persons in respect of whom orders are in force.

14. A person in respect of whom a community service order is in force shall, in addition to complying with any other requirement made by or under this Act or the regulations 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 his place of residence.

Directions.

15. (1) The assigned officer shall not, under section 14, direct a person in respect of whom a 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 14, the assigned officer and a supervisor shall, so far as practicable, avoid—

(a) any conflict with the person's religious beliefs, if any; and

(b) any interference with the times, if any, at which the person normally works or attends a school or other educational establishment.

Duration of community service order.

16. A 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 or the regulations in respect of the order for the number of hours specified in the order;

(b) the expiration of a period of 12 months commencing on the date on which the order was made or, where that period is extended pursuant to section 17, the expiration of that period as so extended; or

(c) the order is revoked pursuant to section 18, 19 or 25,

whichever first occurs.

17. Where, on the application of the person in respect of whom a community service order is in force or the assigned officer, it appears to the supervising 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 court may extend the period during which the order remains in force.

Extension of duration of community service order.

18. (1) Where, on the application of the person in respect of whom a community service order is in force or the assigned officer, it appears to the supervising 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 court may—

Revocation, etc., of community service orders on application.

(a) where the order was made by a court of petty sessions—

(i) revoke the order;

(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 he could have been dealt with for that offence by the court that made the order if the order had not been made; or

(iii) commit the person to custody or release him on bail until he can appear or be brought before the court that made the order; or

(b) where the order was made by the District Court or the Supreme Court, commit the person to custody or release him on bail until he can appear or be brought before the court that made the order, whether or not that court is constituted by the same judge as the court that made the order.

(2) Where, pursuant to subsection (1) (a) (iii) or (b), a person appears or is brought before a court that made a community service order in respect of him, that 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 he could have been dealt with for that offence by that court if it had not made the order.

Revocation of community service order on sentencing for other offence.

19. Where a person in respect of whom a community service order is in force appears before a court, being a court of equal jurisdiction to or higher jurisdiction than the court that made the order, for sentencing in respect of an offence other than the offence in respect of which the order was made, that 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 he could have been dealt with for that offence by the court that made the order if the order had not been made.

Issue of summons or warrant—applications under s. 17.

20. Where an application is made to a court under section 17 or 18 by the assigned officer, the court may issue a summons requiring the person in respect of whom a community service order is made to appear before it at the time specified in the summons and, if the person does not appear in answer to the summons, may issue a warrant for the arrest of the person directing that he be brought before the court as soon as possible after his arrest.

Notification of amendment or revocation of orders.

21. Where a court—

(a) pursuant to section 17, extends the period during which a community service order remains in force; or

(b) pursuant to section 18, 19 or 25, revokes a community service order,

the court shall cause notice of the extension or revocation to be served on the assigned officer and (if that court is not the supervising court) sent to the clerk of the supervising court.

22. (1) Where the supervising court is satisfied that a person in respect of whom a community service order is in force has changed or proposes to change his place of residence or that other sufficient reasons exist, so that some other court of petty sessions is or will be the court of petty sessions nearest to the new place of residence of the person or the most convenient in the circumstances of the case, the supervising court may, by order, amend the order by substituting that other court of petty sessions as the supervising court in place of the court originally appointed. Substitution of new supervising court.

(2) A court shall not make an order under subsection (1) unless the court—

(a) has been notified by the assigned officer that arrangements exist for persons who reside in the area in which the person in respect of whom the community service order is in force resides or intends to reside to perform community service work under a community service order; and

(b) is satisfied that, if an order under subsection (1) is made, community service work can be provided for the person under the arrangements referred to in paragraph (a).

(3) Where a community service order is amended under subsection (1), the court making the amending order shall send to the clerk of the new supervising court referred to in the amending order a copy of the amending order together with such documents and information relating to the person in respect of whom and the offence in respect of which the community service order is in force as it considers likely to be of assistance to that court.

23. (1) If a person in respect of whom a community service order is in force fails, without reasonable cause or excuse, to comply with the order or with any requirement made by or under this Act or the regulations in respect of the order, he shall be guilty of an offence. Breach of requirements of, or relating to, community service order.

(2) Proceedings for an offence under subsection (1) in respect of a community service order shall be brought in accordance with section 24.

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

Issue of summons or warrant—failure to comply with order, etc.

24. If it appears on complaint in writing to a justice that a person in respect of whom a community service order is in force has failed, without reasonable cause or excuse, to comply with the order or with any requirement made by or under this Act or the regulations in respect of the order, the justice may issue a summons requiring the person to appear before the supervising court at the time specified in the summons or may, if the complaint is in writing and on oath, issue a warrant for the arrest of the person and directing that he be brought before the supervising court as soon as possible after his arrest.

Conviction for breach—how dealt with.

25. (1) If the supervising court convicts a person of an offence under section 23 (1), the court may—

(a) without prejudice to the continuation in force of the community service order, impose on the person a fine not exceeding $250;

(b) where the order was made by a court of petty sessions—

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

(ii) commit the person to custody or release him on bail until he can appear or be brought before the court that made the order;

(c) where the order was made by the District Court or the Supreme Court, commit the person to custody or release him on bail until he can appear or be brought before the court that made the order, whether or not that court is constituted by the same judge as the court that made the order; or

(d) take no action.

(2) Where, pursuant to subsection (1) (b) (ii) or (c), a person is to appear or is to be brought before the court that made the community service order in respect of him, the supervising court shall send to the court before which the person is to appear or is to be brought a certificate, signed by a justice, of conviction of an offence under section 23 (1), together with such documents and information as the supervising court considers likely to be of assistance to the court before which the person is to appear or is to be brought.

(3) A certificate under subsection (2) shall be admissible as evidence of an offence under section 23 (1) in proceedings before the court before which a person appears or is brought pursuant to subsection (1) (b) (ii) or (c).

(4) Where, pursuant to subsection (1) (b) (ii) or (c), a person appears or is brought before the court that made the community service order in respect of him, that court may, if it is satisfied that the person is guilty of an offence under section 23 (1)—

(a) without prejudice to the continuation in force of the order, impose on the person a fine not exceeding $250;

(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 he could have been dealt with for that offence by that court if it had not made the order; or

(c) take no action.

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

Subsequent sentence—order to be taken into account.

26. (1) Where a person in respect of whom a 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) that the order was made; and

(b) any thing done under the order.

(2) Where a person in respect of whom a 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 he is dealt with—

(a) where the court is 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) he were a person convicted on indictment; and

(ii) the manner in which he is dealt with were a sentence passed on his conviction; or

(b) where the court is a court of petty sessions—under section 122 (1) of the Justices Act, 1902, as if he 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.

27. (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— Regulations.

(a) providing for the circumstances in which a person other than a probation officer—

(i) may notify a court of arrangements as referred to in section 6 (a);

(ii) may prepare a report as referred to in section 6 (b); or

(iii) may be assigned, under section 13, by the Commission in respect of the administration of a community service order;

(b) prescribing requirements to be complied with by persons in respect of whom community service orders are in force;

(c) providing for the appointment and payment of supervisors to supervise persons in the performance of community service work;

(d) regulating the conduct of supervisors and persons in respect of whom community service orders are in force;

(e) providing for the health and safety of supervisors and those persons;

(f) prescribing the maximum number of hours of community service work that those persons may be required to perform on any one day;

(g) prescribing periods to be included or excluded in computing the number of hours of community service work performed by those persons;

(h) providing for travelling and transport arrangements to be made for persons performing community service work; and

(i) providing for 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.