

**COMMUNITY SERVICE ORDERS (FINE DEFAULT)
AMENDMENT ACT 1987 No. 264**

NEW SOUTH WALES



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**COMMUNITY SERVICE ORDERS (FINE DEFAULT) AMENDMENT
ACT 1987 No. 264**

NEW SOUTH WALES



Act No. 264, 1987

An Act to amend the Community Service Orders Act 1979 with respect to the performance of community service work by certain fine defaulters, and in other respects. [Assented to 16 December 1987]

See also Children (Community Service Orders) (Fine Default) Amendment Act 1987; Miscellaneous Acts (Fine Default) Amendment Act 1987.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the 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. 192, 1979

3. The Community Service Orders Act 1979 is amended as set out in Schedule 1.

Application of amendments to existing fine defaulters

4. (1) In this section—

“existing fine defaulter” means a person in respect of whom—

- (a) a conviction or order (including an enforcement order) referred to in section 26B of the Principal Act has been made before the commencement of that section; and
- (b) any fine, penalty, costs or other amount of money adjudged or required to be paid under the conviction or order (the time for payment of which has expired before that commencement) is unpaid (in whole or in part) at that commencement;

“prescribed officer” means a prescribed officer under section 26B of the Principal Act;

“Principal Act” means the Community Service Orders Act 1979, as amended by this Act.

(2) If a warrant of commitment has been issued under section 87 of the Justices Act 1902 in respect of an existing fine defaulter, the person seeking to execute the warrant shall, before executing the warrant, inform the defaulter that the defaulter may apply, within 7 days of being so informed, to a prescribed officer for a community service order as if section 26B (1) of the Principal Act applied to the defaulter.

(3) The warrant shall not be executed during the 7-day period.

(4) If the existing fine defaulter applies to a prescribed officer, the prescribed officer may make an order in the form prescribed for the purposes of section 26B (2) of the Principal Act to perform community service work.

(5) Part 3 of the Principal Act applies to an order made under subsection (4) as if the order were made under that Part.

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(6) Any period of community service work required to be performed by a person under a community service order made under this section shall be performed concurrently with any period of community service work required to be performed by the person under any other such community service order or any other community service order made in respect of the person under the Community Service Orders Act 1979 before the commencement of section 26B of the Principal Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Headings—

(a) Before section 1, insert:

PART 1—PRELIMINARY

(b) Before section 4, insert:

PART 2—COURT ORDERS

(c) Before section 27, insert:

PART 4—REGULATIONS

(2) Section 3 (**Interpretation**)—

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

(i) After “section 13”, insert “or 26F”.

(ii) 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 (1), definition of “authorised Justice”—

After the definition of “attendance centre”, insert:

“authorised Justice” means—

(a) a Magistrate; or

(b) a Justice of the Peace employed in the Attorney General’s Department;

(c) Section 3 (1), definition of “community service order”—

Omit the definition, insert instead:

“community service order” means—

(a) in Parts 1 and 4—a community service order made under section 4 (1), 26A or 26B;

(b) in Part 2—a community service order made under section 4 (1); and

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(c) in Part 3—a community service order made under section 26A or 26B;

(3) Section 13 (Assignment of officer by the Commission)—

Section 13 (2)—

Omit the subsection.

(4) Part 3—

After section 26, insert:

PART 3—FINE DEFAULT

Community service work in default of payment of fine etc.

26A. (1) If—

- (a) in respect of a person it is adjudged by a conviction or order in proceedings before a Local Court that a fine, penalty, costs or other amount of money, be paid; or
- (b) an enforcement order is made against a person 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, a prescribed officer shall make an order in the prescribed form requiring the person to perform community service work in order to work off the unpaid amount.

(2) If at the end of a period of imprisonment—

- (a) served by a person by way of periodic detention (within the meaning of the Periodic Detention of Prisoners Act 1981); and
- (b) in relation to which a term of imprisonment to which the person was committed by warrant under section 87 of the Justices Act 1902 for non-payment of a fine, penalty, costs or other amount of money was being concurrently served as referred to in section 91A of that Act,

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the whole of the term of imprisonment to which the person was committed by the warrant has not been served and any amount remains unpaid, a prescribed officer shall, after obtaining a report from the governor of the prison in which the person was detained as to the period of periodic detention served, make an order in the prescribed form requiring the person to perform community service work in order to work off the unpaid amount.

- (3) An order under this section shall not be made—
- (a) in respect of a person serving a term of imprisonment (whether by way of periodic detention or otherwise);
 - (b) in relation to a conviction or order in respect 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;
 - (c) in relation to a conviction or order made against a person to whom the Children (Community Service Orders) Act 1987 applies;
 - (d) in relation to an enforcement order made against a person—
 - (i) who was under the age of 18 years at the time the alleged offence to which the order relates was committed; and
 - (ii) who was under the age of 21 years at the time the order was made, under Division 2 of Part IVB of the Justices Act 1902; or
 - (e) in such circumstances as may be prescribed for the purposes of this subsection.

(4) Notice of the making of the order shall be given, in accordance with the regulations, to the person in respect of whom the order is made.

Application to work off fine by community service work

26B. (1) If—

- (a) by virtue of—
 - (i) a conviction or order in proceedings before a Local Court; or
 - (ii) an enforcement order under Division 2 of Part IVB of the Justices Act 1902,

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a person is obliged to pay a fine, penalty, costs or other amount of money;

(b) the amount payable, or any part of the amount, has not been paid; and

(c) a warrant of commitment has been issued under section 87 of the Justices Act 1902 in respect of the person,

the person may apply, in accordance with the regulations, to a prescribed officer for permission to work off the amount payable in satisfaction of the warrant by the performance of community service work.

(2) On receipt of the application, the prescribed officer may make an order in the prescribed form requiring the person to perform community service work.

(3) The decision whether or not to make the order is in the prescribed officer's discretion, and no appeal lies against the prescribed officer's decision not to make an order in a particular case.

(4) The order shall not be made in respect of a person serving a term of imprisonment (whether by way of periodic detention or otherwise).

(5) Notice of the making of the order shall be given, in accordance with the regulations, to the person in respect of whom the order is made.

Number of hours of community service work

26c. (1) Where a prescribed officer makes a community service order, the number of hours to be specified in the order as the number of hours of community service work to be performed by the person in respect of whom the order is made is—

(a) if the amount unpaid in respect of the relevant fine, penalty, costs or other amount of money 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 300 hours.

(2) For the purposes of subsection (1), the prescribed unit is \$50 (or, if another amount is prescribed for those purposes, the amount so prescribed).

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(3) The number of hours of community service work to be performed by a person under a community service order shall be additional to the number of hours specified in any other community service order made under this Act in respect of the person.

Place etc. and time for presentation for work and conditions of order

26D. Sections 9 and 10 (1) apply to a community service order under this Part in the same way as they apply to a community service order under Part 2 and, in the application of those provisions, a reference to a court shall be read as a reference to a prescribed officer.

Notification to Commission of making of order

26E. (1) A prescribed officer shall cause a copy of a community service order made by the prescribed officer to be sent to the Commission.

(2) The failure of the prescribed officer to cause a copy of a community service order to be sent to the Commission does not invalidate the order.

Assignment of officer by the Commission

26F. On receipt of a copy of a community service order sent to it under section 26E (1), 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.

Obligations of persons in respect of whom orders are in force and directions under orders

26G. Sections 14 and 15 apply to a community service order under this Part in the same way as they apply to a community service order under Part 2.

Duration of community service order

26H. 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;
- (c) the order is considered satisfied under section 26I or 26J;
or
- (d) the order is revoked under section 26K (5),

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whichever first occurs.

Satisfaction of certain orders by payment

26i. If a person who is the subject of a community service order—

- (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 26A or an amount payable as referred to in section 26B,

makes payment, as prescribed, of—

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

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

Subsequent convictions—fine defaulters

26j. (1) If a person in respect of whom a community service order is in force is sentenced to imprisonment (whether by way of periodic detention or otherwise), the person shall notify the assigned officer of that fact.

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

Breach of community service order for fine default

26k. (1) If it appears to an assigned officer that a person in respect of whom a community service order is in force has failed without reasonable cause or excuse to comply with—

- (a) the order; or
- (b) any requirement made by or under this Act or the regulations in respect of the order,

the assigned officer shall report the matter to a prescribed officer setting out the reasons why the assigned officer considers the order should be revoked.

(2) The prescribed officer shall cause a copy of the report to be served in accordance with the regulations on the person in respect of whom the community service order was made.

(3) A person on whom a report is served under subsection (2) may, within 14 days after service of the report, give reasons in writing to the prescribed officer why the order should continue.

(4) If—

- (a) no reasons are given; or

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(b) the prescribed officer considers that the reasons given are insufficient to justify the continuation of the order, the prescribed officer shall refer the matter to an authorised Justice.

(5) The authorised Justice may, after considering submissions from the prescribed officer and the person in respect of whom the order is in force—

(a) revoke the order; or

(b) determine that the order shall continue,

and the decision of the authorised Justice shall be final.

(6) On revoking an order, the authorised Justice may, having regard to the extent to which the unpaid amount of the fine, penalty, costs or other amount of money in respect of which the order was made exceeds the amount worked off by the performance of community service work in accordance with the order, issue a warrant under section 87 of the Justices Act 1902 committing the person to prison for a period calculated in accordance with that section in respect of the unsatisfied balance.

(5) Section 27 (**Regulations**)—

(a) Section 27 (1) (a) (iii)—

After “section 13”, insert “or 26F”.

(b) Section 27 (1) (b1), (b2)—

After section 27 (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;

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