



New South Wales

Children (Community Service Orders) Regulation 2020

under the

Children (Community Service Orders) Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Children (Community Service Orders) Act 1987*.

GARETH WARD, MP
Minister for Families, Communities and Disability Services

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the *Children (Community Service Orders) Regulation 2015*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the following matters—

- (a) conditions relating to the performance of community service work, in particular, in relation to the following—
 - (i) maximum hours of work to be performed each day,
 - (ii) the taking of tea breaks and meal breaks,
 - (iii) how hours of work performed are to be calculated,
 - (iv) requirements to be observed by offenders performing community service work,
 - (v) travelling and transport arrangements,
- (b) prescribing certain State authorities for which community service work can be performed even if the work would otherwise be performed by a regular employee,
- (c) the service of documents,
- (d) the appointment of assigned officers and supervisors in respect of offenders carrying out community service work and the requirement that a supervisor report to an assigned officer,
- (e) the making of applications for the extension or revocation of children's community service orders,
- (f) savings and formal matters.

This Regulation is made under the *Children (Community Service Orders) Act 1987*, including sections 16(1), 18(1A)(b) and 29 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Children (Community Service Orders) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note. This Regulation repeals and replaces the *Children (Community Service Orders) Regulation 2015*, which would otherwise be repealed on 1 September 2020 by section 10(2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

offender means a person in respect of whom a children's community service order is in force.

the Act means the *Children (Community Service Orders) Act 1987*.

work site means a place at which an offender performs, or is required to perform, community service work.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Conditions of community service work

4 Maximum hours of work per day

- (1) The maximum number of hours of community service work that an offender may be required to perform in a day is 8.
- (2) However, an offender may agree to perform more community service work in a day.

5 Tea breaks and meal breaks

- (1) An offender is to be given tea breaks as the offender's assigned officer or supervisor thinks fit.
- (2) However, an offender is not entitled to tea breaks at a rate greater than 5 minutes for each hour for which the offender is actually engaged in performing community service work.
- (3) An offender who has been engaged in performing community service work continuously for 4 hours is entitled to a meal break of 1 hour.

6 Computation of hours of work performed

- (1) The following periods of time are to be taken to form part of the time spent by an offender in performing community service work—
 - (a) time spent by the offender at the offender's work site—
 - (i) while actually engaged in performing community service work, and
 - (ii) in having a meal break or tea break, and
 - (iii) in accordance with a direction given by the assigned officer or a supervisor,
 - (b) as determined by the offender's assigned officer, the reasonable time for the offender to travel between the offender's place of residence and the offender's work site,
 - (c) time that elapses between the offender's early release from community service work on any day and the time when the offender would (but for the early release) otherwise have been released.
- (2) The assigned officer for an offender may determine that the whole or any part of the time spent by the offender performing community service work on a day is not to count if the offender, while at the work site on that day—
 - (a) is under the influence of drugs or alcohol, or
 - (b) behaves in an offensive manner.
- (3) The periods of time referred to in subclauses (1)(b) and (2) are to be determined by the offender's assigned officer in accordance with any relevant directions given by the Secretary.

7 Offenders to comply with certain requirements

- (1) An offender must, while performing community service work—
 - (a) comply with any standards of dress, cleanliness or conduct that may be specified by the assigned officer from time to time, and
 - (b) keep in good order and condition clothing and equipment issued to the offender in connection with the performance of that work.
- (2) An offender must not damage or deface property that is on or forms part of a work site otherwise than in the course of performing community service work in accordance with the directions of the assigned officer or supervisor.

8 Inability of offender to comply with certain directions

- (1) An offender who is directed to do anything that the offender is incapable of doing, is not required to do that thing if—
 - (a) the offender advises the assigned officer or supervisor as soon as practicable, and
 - (b) the assigned officer or supervisor is satisfied that the offender is incapable of doing that thing.
- (2) In order to be satisfied, the assigned officer or supervisor may require the offender to furnish a certificate issued by a registered medical practitioner to the effect that the offender is incapable of doing the thing concerned.

9 Travelling and transport arrangements

The Secretary may, if the Secretary thinks fit—

- (a) provide transport for an offender between the offender's work site and the offender's place of residence, or
- (b) reimburse the offender for the offender's expenses in travelling between the offender's work site and the offender's place of residence or in performing community service work.

10 Work sites—authorities of the State

- (1) For the purposes of section 18(1A)(b) of the Act, the following authorities of the State are prescribed—
 - (a) a Public Service agency specified in Schedule 1 to the *Government Sector Employment Act 2013*,
 - (b) a council or county council within the meaning of the *Local Government Act 1993*.
- (2) For the purposes of section 18(1A)(b) of the Act, community service work may only be performed for an authority of the State prescribed by this clause in circumstances where arrangements satisfactory to the Secretary have been made in relation to the availability, location and type of work to be performed.

Note. Section 18(1) of the Act provides that an assigned officer must not direct a person in respect of whom a children's community service order is in force to perform community service work if, in performing the work, the person would take the place of another person who would otherwise be employed in that work as a regular employee. However, section 18(1A)(b) provides that section 18(1) does not prevent a direction being given that would otherwise contravene that prohibition as long as the community service work is to be performed for such authorities of the State, in such circumstances, as are prescribed by the regulations.

Part 3 Miscellaneous

11 Service of documents

- (1) Service of a document under the Act or this Regulation is to be treated as having been effected if it is served by post at the last known address of the person on whom the document is required to be served.
- (2) In addition, a children's community service order made by an authorised justice is taken to have been effectively served if a copy of the children's community service order is served personally on the person to whom the order relates.

12 Appointment of assigned officers

- (1) For the purposes of section 16(1) of the Act, the Secretary may appoint a person who is, in the opinion of the Secretary, suitably qualified and of suitable character as an assigned officer in respect of the administration of a children's community service order.
- (2) A person so appointed is entitled to be paid remuneration (including travelling and subsistence allowances) as determined by the Secretary in respect of the person, unless the person is an officer or temporary employee of the Public Service.

13 Appointment of supervisors

- (1) The Secretary may appoint a person who is, in the opinion of the Secretary, suitably qualified and of suitable character to supervise persons in the performance of community service work.
- (2) A person so appointed is entitled to be paid remuneration (including travelling and subsistence allowances) as determined by the Secretary in respect of the person, unless the person is an officer or temporary employee of the Public Service.

14 Supervisor to report to assigned officer

A supervisor must, when required by an assigned officer to do so, report to the assigned officer on any matter relating to an offender under the supervisor's supervision.

15 Applications for extension of order

An application under section 20A of the Act for the extension of the period for which a children's community service order is in force must be in writing and in the form determined by the Secretary from time to time (if any).

16 Application for revocation of order

An application under section 21 of the Act for the revocation of a children's community service order must be in writing and in the form determined by the President of the Children's Court from time to time (if any).

17 Savings

- (1) The *Children (Community Service Orders) Regulation 2015* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Children (Community Service Orders) Regulation 2015*, had effect under that Regulation continues to have effect under this Regulation.