

[Act 1997 No 5]



New South Wales

Sentencing Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend four Acts under which offenders may be required to perform various forms of community service work with respect to the civil liability of organisations for which the work is performed, the responsibilities of offenders, the damages they may recover, the type of work they may perform and various other matters.

In particular, the Bill amends:

- (a) the *Community Service Orders Act 1979*, the *Children (Community Service Orders) Act 1987*, the *Periodic Detention of Prisoners Act 1981* and the *Home Detention Act 1996*:
 - (i) to provide that a civil action that would otherwise lie against a person or organisation supervising an offender performing community service work in accordance with any of those Acts does not (subject to certain conditions) lie against the person or organisation but lies instead against the Crown, and
-

- (ii) to impose limits on the damages recoverable for injury suffered by the offender, and
- (iii) to require offenders to disclose any disabilities that substantially increase their risk of injury from work, and
- (b) the *Community Service Orders Act 1979*, the *Children (Community Service Orders) Act 1987* and the *Periodic Detention of Prisoners Act 1981* with respect to the work that may be performed by offenders, and
- (c) the *Community Service Orders Act 1979* and the *Children (Community Service Orders) Act 1987* with respect to miscellaneous procedural and substantial aspects of community service orders, including the consequences of breaching those orders.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Community Service Orders Act 1979* set out in Schedules 1 and 3.

Clause 4 is a formal provision giving effect to the amendments to the *Children (Community Service Orders) Act 1987* set out in Schedules 2 and 4.

Clause 5 is a formal provision giving effect to the amendments to the *Periodic Detention of Prisoners Act 1981* set out in Schedule 5.

Clause 6 is a formal provision giving effect to the amendments to the *Hume Detention Act 1996* set out in Schedule 6.

Schedule 1 Miscellaneous amendments to Community Service Orders Act 1979

Schedule 2 Miscellaneous amendments to Children (Community Service Orders) Act 1987

Supervising court

At present, community service orders under the *Community Service Orders Act 1979* are registered in a court that is treated as the supervising court in respect of those orders, even if it is not the sentencing court. The proposed Act makes amendments to abolish this system. It is to be left, then, to:

- (a) the sentencing court or an equivalent or superior court to hear proceedings relating to breaches of community service orders and applications to revoke those orders, and
- (b) any Local Court to hear applications to extend those orders.

Consequently, a number of references to the supervising court are omitted, and provisions that are based on the supervising court system are revised or omitted: Schedule 1 [2], [3], [5], [7]–[9], [11]–[13].

Law revision

Schedule 2 [4] and [7] omit references in the *Children (Community Service Orders) Act 1987* to extensions of orders by a court, as extensions under that Act are now made only by the Director-General.

Changes to the regime applying to community service orders

If a community service order (under either Act) does not specify whether it is to be served concurrently with another community service order that is also to apply, or already applies, to the same person, the order will be treated as concurrent: Schedules 1 [1] and 2 [1].

Presently, a person must not be directed under a community service order to do the sort of work that a person is normally employed to do, even if no person is, or is likely to be, employed in the work. Section 15 of the *Community Service Orders Act 1979* and section 18 of the *Children (Community Service Orders) Act 1987* are amended to prohibit a direction that would in fact prevent the employment of a person: Schedules 1 [4] and 2 [2]. The *Children (Community Service Orders) Act 1987* presently also contains an exception to this rule and that exception is not disturbed.

The duration of community service orders will be able to be extended even after they have expired, as long as the extension is applied for before the expiry: Schedules 1 [6] and 2 [3].

A breach of one community service order that applies to a person will be treated as a breach of every such order that applies to the person, even in the case of cumulative orders and even if the person has not yet started serving one or more of them: Schedules 1 [10] and 2 [5].

More than one breach will be able to be included in the one complaint or summons: Schedules 1 [12] and 2 [6].

Savings and transitional provisions

A schedule of savings and transitional provisions is inserted in each Act: Schedules 1 [14] and [15] and 2 [8]. These provisions include:

- (a) the standard power to make savings and transitional regulations, and
- (b) specific provisions that are consequential on the enactment of Schedules 1 and 2.

Schedule 3 Amendment of Community Service Orders Act 1979 with respect to work incidents

Liability in respect of work incidents

Schedule 3 [1] inserts a new Part 4:

- (a) to transfer any liability for the acts or omissions of persons performing community service work from the party for whom the work is performed to the Crown, but only if the work is approved and the act or omission is not expressly directed by that party: proposed section 26M, and
- (b) to transfer any liability (being liability to persons performing community service work for the acts or omissions of the party for whom the work is performed) from that party to the Crown, but only if the work is approved and the act or omission is not intended to cause harm: proposed section 26N, and
- (c) to impose limits on the common law liability of the Crown for such acts or omissions and to require offenders to mitigate their losses (for example by undertaking rehabilitation): proposed section 26O, applying the principles of Division 3 of Part 5 of the *Workers Compensation Act 1987*, and

- (d) to impose on offenders a duty to declare any disabilities that substantially increase their risk of injury from work: proposed section 26P, and
- (e) to provide that the Director-General can settle claims against the Crown that are based on liability that is transferred under proposed Part 4: proposed section 26Q.

Related amendments

Schedule 3 [2] consequentially renumbers existing Part 4 (Regulations) as Part 5.

Schedule 3 [3] inserts a provision to make it clear that the new Part applies only to incidents that occur after the commencement of the Part.

Schedule 4 Amendment of Children (Community Service Orders) Act 1987 with respect to work incidents

Schedule 4 [1] inserts new Part 6 that parallels proposed Part 4 of the *Community Service Orders Act 1979* (outlined above).

Schedule 4 [2] consequentially renumbers existing Part 6 (Miscellaneous) as Part 7.

Schedule 4 [3] inserts a provision to make it clear that the new Part applies only to incidents that occur after the commencement of the Part.

Schedule 5 Amendment of Periodic Detention of Prisoners Act 1981

Presently, a person must not be directed under an order under section 10 (1) (b) of the *Periodic Detention of Prisoners Act 1981* to do the sort of work that a person is normally employed to do, even if no person is, or is likely to be, employed in the work. Section 10 of that Act is amended to prohibit a direction that would in fact prevent the employment of a person: Schedule 5 [1].

Schedule 5 [2] inserts new Part 5 that parallels proposed Part 4 of the *Community Service Orders Act 1979* (outlined above).

Schedule 5 [3] consequentially renumbers existing Part 5 (Miscellaneous) as Part 6.

Schedule 5 [4] and [5] insert provisions as a consequence of the amendment made by Schedule 5 [1] and to make it clear that the new Part 5 applies only to incidents that occur after the commencement of the Part.

Schedule 6 Amendment of Home Detention Act 1996

Schedule 6 [1] replaces sections 27 and 28 to apply proposed Part 4 of the *Community Service Orders Act 1979* (outlined above) to community service work under a home detention order and to support the proposed schedule of savings and transitional provisions outlined below.

Schedule 6 [4] inserts a replacement Schedule 1 (Savings and transitional provisions) to make it clear that the proposed section 27 applies only to incidents that occur after the commencement of the section.

Schedule 6 [2], [3], [5] and [6] make consequential renumberings.