

# Children (Community Service Orders) Act 1987 No 56

[1987-56]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Children \(Criminal Proceedings\) Amendment Act 2008 No 54](#) (not commenced)

### Authorisation

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# Children (Community Service Orders) Act 1987 No 56



New South Wales

An Act with respect to the performance of community service work by children and other young persons who have been found guilty of criminal offences.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Children (Community Service Orders) Act 1987*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**assigned officer**, in relation to a children's community service order, means the officer or other person for the time being assigned by the Director-General under section 16 in respect of the administration of the order, or the person exercising or performing, in accordance with the regulations, the powers, authorities, duties and functions of the officer or person so assigned.

**authorised justice** means:

- (a) a Magistrate or Children's Magistrate, or
- (b) an authorised officer within the meaning of the *Criminal Procedure Act 1986*.
- (c) (Repealed)

**authorised Magistrate** has the same meaning as it has in the *Children's Court Act 1987*.

**child** means a person who is under the age of 18 years.

**children's community service order** means a community service order made under section 5 or a community service order made under section 79 of the [Fines Act 1996](#) in respect of a person to which this Act applies.

**Children's Court** means the Children's Court of New South Wales constituted by the [Children's Court Act 1987](#).

**community service work** means unpaid work approved by the Minister or unpaid work of a class or description so approved.

**Department** means the Department of Juvenile Justice.

**Director-General** means the person for the time being holding office or acting as the Director-General of the Department.

**officer** means an officer or temporary employee, within the meaning of the [Public Service Act 1979](#), employed in the Department.

**regulation** means a regulation made under this Act.

**relevant maximum period**, in relation to a children's community service order, means the period of 12 months commencing on the date on which the order was made or, if that period is extended pursuant to section 20A, that period as so extended.

**required number of hours**, in relation to a children's community service order, means the number of hours of community service work that the person to whom the order relates is required by the order to perform.

**supervisor** means a person appointed pursuant to the regulations to supervise the performance of community service work by persons in respect of whom children's community service orders are in force.

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

(2) (Repealed)

#### 4 Application

This Act applies to a person:

- (a) who has pleaded guilty to an offence in, or has been found guilty or convicted of an offence by, a court,
- (b) who was a child when the offence was committed, and
- (c) who was under the age of 21 years when charged before the court with the offence.

## **Part 2 Making of children's community service orders by courts**

### **5 Making of children's community service orders**

- (1) If, in dealing with a person to whom this Act applies, a court would, but for this section:
- (a) make an order imposing a sentence of imprisonment on the person, or
  - (b) make an order under section 33 (1) (g) of the *Children (Criminal Proceedings) Act 1987* in respect of the person,
- the court may, instead of making that order, make an order requiring the person to perform community service work.
- (1A) An order under this section may recommend that the community service work to be performed by the person in respect of whom the order is made should include:
- (a) the removal of graffiti from buildings, vehicles, vessels and places, and
  - (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.
- (2) A court that is exercising the functions of the Children's Court under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987* shall not exercise its powers under this section otherwise than in accordance with the provisions of that Division.
- (3) A court, other than a court that is exercising the functions of the Children's Court under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*, shall not exercise its powers under this section in relation to an offence if it has given or made, or proposes to give or make, a direction or order under Division 3 of Part 2 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the same offence.

### **5A (Repealed)**

### **6 Explanation of nature and effect of proposed children's community service orders**

If a court proposes to make a children's community service order in respect of a person, it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by the person:

- (a) the purpose and effect of the proposed order,
- (b) the consequences that may follow if the person fails to comply with the proposed order or any requirement made by or under this Act in respect of the proposed order, and
- (c) that the proposed order may be amended or revoked.

## **7, 8 (Repealed)**

### **9 Children's community service orders not to be made by court unless work is available**

A court shall not exercise its powers under section 5 in respect of a person unless:

- (a) the court has been notified by an officer, in person or by writing, that arrangements exist for persons who reside in the area in which the person resides or intends to reside to perform community service work under a children's community service order, and
- (b) the court is satisfied (after considering a report from an officer about the person and the person's circumstances and, if it thinks necessary, after hearing evidence from an officer) that:
  - (i) the person is a suitable person and is sufficiently mature to perform community service work under a children's community service order, and
  - (ii) if such an order is made, community service work can be provided for the person under the arrangements referred to in paragraph (a).

### **10 Children's community service orders may run concurrently**

More than one children's 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.

### **11 Conditions that may be attached to children's community service order**

- (1) When a children's community service order is made, the court making the order 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 while the order remains in force.
- (2) This section extends to children's community service orders made under the [Fines Act 1996](#).

### **12 Preparation and service of copies of children's community service order**

- (1) A court which makes a children's community service order shall, as soon as practicable after making the order, cause the order to be reduced to writing.
- (2) The court shall cause a copy of a children's community service order:
  - (a) to be served on the person in respect of whom the order is made before that person leaves the precincts of the court,
  - (b) to be sent to the Director-General, and
  - (c) in the case of a court other than the Children's Court—to be sent to a Registrar of the Children's Court together with such documents and information as it considers

likely to be of assistance to the Children's Court.

(3) (Repealed)

(4) The failure of a court 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.

### **13 Number of hours of community service work**

(1) When a children's community service order is made, the court making the order shall specify in the order the number of hours of community service work to be performed by the person in respect of whom the order is made.

(2) 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 court is not to exceed:

(a) in respect of an offence committed by a person under the age of 16 years—100 hours, and

(b) in respect of an offence committed (whether before, on or after the commencement of this subsection) by a person of or above the age of 16 years:

(i) 100 hours, if the offence concerned is an offence for which the maximum term of imprisonment provided by law does not exceed 6 months, and

(ii) 200 hours, if the offence concerned is an offence for which the maximum term of imprisonment provided by law exceeds 6 months but does not exceed one year, and

(iii) 250 hours, if the offence concerned is an offence for which the maximum term of imprisonment provided by law exceeds one year.

(2AA) The regulations may vary the number of hours specified in subsection (2) in respect of a class of offences, but not so as to exceed the number so specified.

(2A), (2B) (Repealed)

(3) The court may specify that the hours of community service work to be performed by a person in respect of whom a children's 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 100 hours.

(3A) Despite subsection (3), if:

- (a) the person concerned is of or above the age of 16 years, and
- (b) at least one of the orders was made in respect of an offence for which the maximum term of imprisonment provided by law exceeds 6 months,

the sum of the numbers of hours referred to in subsection (3) (a) and (b) may exceed 100 hours, but must not exceed 250 hours. However, the number of hours of work remaining to be performed under orders made in respect of offences other than offences of the kind referred to in paragraph (b) must not, at any time, exceed 100 hours.

(4) (Repealed)

(5) If a court has not specified in respect of any children's community service order in force in respect of a person whether the hours of work under the order are to be served concurrently with or in addition to the hours under any other such order, the hours are to be served concurrently as long as the orders are both in force. The limits specified in this section apply in such a case as if the court had specified concurrent community service.

#### **14 Place etc and time for presentation for work**

- (1) When a children's community service order is made, the court making the order shall specify in the order:
  - (a) a place at which or a person to whom the person shall present himself or herself for the purpose of enabling the administration of the order to be commenced, and
  - (b) a period within which the person shall so present himself or herself.
  - (c) (Repealed)

(2) This section extends to children's community service orders made under the *Fines Act 1996*.

### **Part 3 Administration of children's community service orders**

#### **15 Children's Court to supervise the administration of children's community service orders**

The Children's Court shall be the supervising court in respect of a children's community service order, whether or not the order was made by the Children's Court.

## **16 Assignment of officer by Director-General**

- (1) On receipt of a copy of a children's community service order sent to the Director-General in accordance with section 12 (2) of this Act or section 85 (3) of the *Fines Act 1996*, the Director-General shall assign an officer, or, where the regulations so provide, a person other than an officer, in respect of the administration of the order.
- (2) (Repealed)

## **17 Obligations of persons subject to children's community service orders**

- (1) A person in respect of whom a children's community service order is in force shall, in addition to complying with any other requirement made by or under this Act 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 and such places 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 the person's place of residence.
- (2) The work to be performed by a person in respect of whom a children's community service order is in force (being an order containing a recommendation referred to in section 5 (1A)) must, if practicable, include:
  - (a) the removal of graffiti from buildings, vehicles, vessels and places, and
  - (b) the restoration of the appearance of buildings, vehicles, vessels and places consequent on the removal of graffiti from them.

## **18 Directions**

- (1) The assigned officer must not, under section 17, direct a person in respect of whom a children's community service order is in force to perform work if, in performing the work, the person would take the place of any other person who would otherwise be employed in that work as a regular employee.
- (1A) Subsection (1) does not prevent a direction being given under section 17 to perform work, even if the person would take the place of any other person who would otherwise be employed in that work as a regular employee, as long as the work is to be performed:
  - (a) at facilities (within the meaning of the *Community Welfare Act 1987*) operated by officers, or

(b) for such authorities of the State, in such circumstances, as are prescribed by the regulations.

(2) In giving directions to a person under section 17, the assigned officer and a supervisor shall, so far as is reasonably practicable:

(a) take into consideration the person's capacities and interests, having regard to the person's physical, psychological, behavioural, intellectual and cultural characteristics, and

(b) avoid any conflict with the person's religious beliefs, if any, or the times, if any, at which the person usually works or attends a school or other educational establishment from time to time.

### **19 Duration of children's community service orders**

A children's 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 in respect of the order, for the number of hours specified in the order,

(b) the expiration of the relevant maximum period, or

(c) the order is revoked or considered satisfied under this Act or the [Fines Act 1996](#), whichever first occurs.

## **Part 4 Extension and revocation of children's community service orders**

### **20 Increase in hours of children's community service orders**

(1) The Director-General may from time to time direct that a person's required number of hours under a children's community service order be increased if the Director-General is of the opinion:

(a) that the person has failed, without reasonable excuse, to comply with the order or with any requirements made by or under this Act in respect of the order, and

(b) that the failure to comply was trivial in nature, or there are other good reasons why the failure to comply should be dealt with by increasing the person's required number of hours.

(2) A person's required number of hours, as increased under this section, must not exceed the required number of hours specified in the person's children's community service order by more than 10 hours.

(3) The person may apply for a review of the increase under this section to the court that

made the order and, following the review, that court may confirm or revoke the direction.

## **20A Extension of period of children's community service orders**

- (1) An application for an extension of the relevant maximum period for a children's community service order may be made to the Director-General by:
  - (a) the person in respect of whom the order was made, or
  - (b) the assigned officer,on the grounds that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to extend that period.
- (2) Such an application may be made even if the relevant maximum period has expired.
- (3) If satisfied that the applicant has established the grounds on which the application is made, the Director-General:
  - (a) may extend the relevant maximum period, and
  - (b) in that event, must cause notice of the extension to be sent to the assigned officer.
- (4) For the purposes of determining an application for extension of a children's community service order, the order is taken to be in force even if the relevant maximum period has expired.

## **21 Application for revocation of children's community service order**

- (1) An application to revoke a children's community service order may only be made:
  - (a) by the assigned officer on the grounds that the person in respect of whom the children's community service order is in force has failed, without reasonable excuse, to comply with the order, or
  - (b) by the person in respect of whom the children's community service order is in force or the assigned officer on the grounds that it would (having regard to circumstances that have arisen since the order was made) be in the interests of justice to revoke the order.
- (2) For the purposes of this section:
  - (a) failure by a person to perform the required number of hours of community service work under a children's community service order within the period for which the order is in force is taken to constitute failure by the person to comply with the order, and
  - (b) failure by a person to comply with one order (the **primary failure**) is taken to

constitute failure by the person to comply with every other children's community service order that is in force when the primary failure occurs.

- (3) An application under subsection (1) cannot be made later than one month after the expiry of the relevant maximum period.

### **21A Revocation of children's community service order**

- (1) On receiving an application for revocation of a children's community service order, the Children's Court may:

(a) in the case of an order made by the Children's Court:

(i) revoke the order, or

(ii) revoke the order and deal with the person in respect of whom the order was made, for the offence in respect of which the order was made, in any manner in which the person could have been dealt with for that offence by the Children's Court had the order not been made, or

(b) in the case of an order made by some other court, subject to the [Bail Act 1978](#), commit the person to custody until the person can appear or be brought before that other court, whether or not that other court is constituted by the same person as that by whom it was constituted when the order was made.

- (2) If, pursuant to subsection (1) (b), a person appears or is brought before a court that made a children's community service order in respect of the person, 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, in any manner in which the person could have been dealt with for that offence by the court had the order not been made.

- (3) A person on whom a penalty is imposed as a consequence of the revocation of a children's community service order under this section has the same rights of appeal as if the penalty had been imposed when the person was convicted of the offence to which the penalty relates.

- (4) For the purposes only of determining an application for revocation of a children's community service order, the order is taken to be in force even if the relevant maximum period has expired.

### **22 Revocation of children's community service orders on being dealt with for other offences**

- (1) When a person in respect of whom a children's community service order made by a court is in force appears before a court (being the same court as, or a court of higher jurisdiction than, the court that made the order) to be dealt with in respect of 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, in any manner in which the person could have been dealt with for that offence by the court that made the order had the order not been made.

(2) For the purposes of subsection (1), the Children's Court and a Local Court shall be the same as each other.

(3), (4) (Repealed)

### **22A, 22B (Repealed)**

### **23 Issue of court attendance notice or warrant**

(1) If an application in respect of a person is made to the Children's Court under section 21 by the assigned officer, the Children's Court:

(a) may issue a court attendance notice for the appearance before it of the person, and

(b) if the person does not appear in answer to the court attendance notice—may issue a warrant directing the arrest of the person.

(2) An officer or a member of the police force may arrest a person in respect of whom a warrant has been issued under this section, whether or not the warrant is in the possession of the officer or member of the police force at the time of arrest.

## **Part 5**

### **24-26A (Repealed)**

## **Part 6 Liability in respect of work incidents**

### **26B Definition**

In relation to work performed under a children's community service order, a reference in this Part to a **person for whom work is performed** includes any person (including a corporation):

(a) for whose benefit the work is performed, or

(b) who directs or supervises the work, specifies its terms or conditions or controls it, or

(c) who owns or occupies the premises or land on which the work is performed.

**26C Act or omission of offender engaged in community service work**

- (1) No act or omission of a person that occurs in the course of the person's performance of work under a children's community service order gives rise to any civil liability on the part of the person for whom the work is performed.
- (2) A civil action that would, but for subsection (1), lie against the person for whom the work is performed lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if:
  - (a) the work concerned was not work approved by the Director-General, or
  - (b) the act or omission concerned was, or was a necessary part of, an act or omission that was expressly required by the person for whom the work was performed but was neither approved nor required by the Director-General.

**26D Act or omission of supervisor of community service work**

- (1) No act or omission of a person for whom work is performed under a children's community service order gives rise to any civil liability on the part of the person to the person who performs that work if the act or omission occurs in the course of that work.
- (2) A civil action that would, but for subsection (1), lie against the person for whom the work is performed lies instead against the Crown.
- (3) Subsections (1) and (2) do not have effect if:
  - (a) the work concerned was not work approved by the Director-General, or
  - (b) the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.

**26E (Repealed)**

**26F Disclosure of material facts about health**

- (1) A person in respect of whom a children's community service order is in force has, while the order is in force, a duty to disclose as soon as possible to the person's assigned officer:
  - (a) any condition of the person that is a condition to which this section applies, or
  - (b) any substantial change in that condition.
- (2) A person's **condition to which this section applies** is any medical, physical or mental condition of the person of which the person is aware and that the person is aware substantially increases the risk to the person of injury in performing work of any kind.

## **26G Settlement of claims**

The Director-General may, on behalf of the Crown, settle any action that lies against the Crown because of this Part. The Director-General may do so on such terms as he or she thinks fit.

## **Part 7 Miscellaneous**

### **27 Notice of revocation of children's community service orders**

If a court revokes a children's community service order, the court must have notice of the revocation sent to the Director-General and to the assigned officer and, if the court is not the Children's Court, to a Registrar of the Children's Court.

### **28 Subsequent dealing—children's community service orders to be taken into account**

- (1) If a person in respect of whom a children's 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) the fact that the order was made,
  - (b) any thing done under the order, and
  - (c) the number of hours of community service work performed by the person under the order.
- (2) If a person in respect of whom a children's 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 the person is dealt with:
  - (a) in the case of a decision of the Children's Court or a Local Court—under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001*, or
  - (b) in the case of a decision of 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) the person were a person convicted on indictment, and
    - (ii) the manner in which the person is dealt with were a sentence passed on his or her conviction.

### **28A Disclosure of information**

- (1) A person who discloses any information obtained in connection with the administration or execution of this Act is guilty of an offence unless the disclosure is made:
  - (a) with the consent of the person from whom the information was obtained, or



- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (2) Proceedings for an offence against this section shall be dealt with summarily before a Local Court.

## **29 Regulations**

- (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:
  - (a) the circumstances in which a person other than an officer may be assigned by the Director-General in respect of the administration of a children's community service order,
  - (b) the requirements to be complied with by persons in respect of whom children's community service orders are in force,
    - (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,
  - (c) the appointment and payment of supervisors in respect of children's community service orders to supervise persons in the performance of community service work,
  - (d) the conduct of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force,
  - (e) the health and safety of supervisors in respect of children's community service orders and persons in respect of whom children's community service orders are in force,
  - (f) the maximum number of hours of community service work that persons in respect of whom children's community service orders are in force may be required to

perform on any one day,

- (g) the periods to be included or excluded in computing the number of hours of community service work performed by persons in respect of whom children's community service orders are in force,
- (h) travelling and transport arrangements to be made for persons performing community service work, and
- (i) 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.

### **30 Savings and transitional provisions**

Schedule 1 has effect.

### **31 Delegation of functions**

- (1) The Minister may delegate to the Director-General, or to any other person, the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.
- (2) The Director-General may delegate to any person the exercise of:
  - (a) any of the functions delegated under subsection (1) to the Director-General by the Minister, or
  - (b) any of the other functions of the Director-General under this Act or the regulations, other than this power of delegation.

## **Schedule 1 Savings and transitional provisions**

(Section 30)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Sentencing Legislation Amendment Act 1997*

*Criminal Legislation Amendment Act 2001*, to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**2 Provisions consequent on enactment of Schedule 2 to *Sentencing Legislation Amendment Act 1997***

- (1) Section 13 (5) applies in respect of any order only if the order is made after the commencement of that subsection.
- (2) A direction in force under section 17 at the commencement of Schedule 2 [2] to the *Sentencing Legislation Amendment Act 1997* continues in force, as if section 18 had not been amended by that item, until it expires or a new direction is given in its place.
- (3) The repeal and re-enactment of section 20 by the *Sentencing Legislation Amendment Act 1997* do not affect any extension ordered before the repeal and re-enactment take effect.
- (4) Section 20 extends to apply to any children's community service order that is in force immediately before the commencement of that subsection.
- (5) Section 24 (4) and (5) as inserted by the *Sentencing Legislation Amendment Act 1997* apply to a failure to comply that occurs after the commencement of those subsections, but in respect of any children's community service order in force at the time of the failure to comply, whenever the order was made.

**3 Provisions consequent on enactment of Schedule 4 to *Sentencing Legislation Amendment Act 1997***

Part 6 (Liability in respect of work incidents) applies only in respect of an act or omission, or an injury caused by an act or omission, that occurs after the commencement of that Part.