

First print



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
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- (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 *Home 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.

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New South Wales

Sentencing Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Community Service Orders Act 1979*, *Children (Community Service Orders) Act 1987*, *Periodic Detention of Prisoners Act 1981* and *Home Detention Act 1996* with respect to civil liability arising from community service work and work under periodic detention; to require offenders to disclose disabilities that pose a risk of injury from such work; to redefine the type of work that may not be ordered under those Acts; to make certain administrative changes to the two community service Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sentencing Legislation Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Community Service Orders Act 1979 No 192

The *Community Service Orders Act 1979* is amended as set out in Schedules 1 and 3.

4 Amendment of Children (Community Service Orders) Act 1987 No 56 10

The *Children (Community Service Orders) Act 1987* is amended as set out in Schedules 2 and 4.

5 Amendment of Periodic Detention of Prisoners Act 1981 No 18

The *Periodic Detention of Prisoners Act 1981* is amended as set out in Schedule 5. 15

6 Amendment of Home Detention Act 1996 No 78

The *Home Detention Act 1996* is amended as set out in Schedule 6.

**Schedule 1 Miscellaneous amendments to
Community Service Orders Act 1979**

(Section 3)

[1] Section 7 Number of hours of community service work

Insert after subsection (3):

5

- (4) If a court has not specified in respect of any 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 subsection (2) apply in such a case as if the court had specified concurrent community service.

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[2] Section 8 Supervising court

Omit the section.

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[3] Section 12 Preparation and service of copy of order

Omit section 12 (2). Insert instead:

- (2) The court is to cause a copy of the written order to be served on the person in respect of whom the order is made before the person leaves the precincts of the court, and another copy to be sent to the Director-General.

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[4] Section 15 Directions

Omit section 15 (1). Insert instead:

- (1) The assigned officer must not, under section 14, direct a person in respect of whom a 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.

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[5] Section 17 Extension of duration of community service order

Omit "the supervising court". Insert instead "a Local Court".

[6] Section 17 (2)

Insert at the end of the section:

- (2) The court may extend the period even if it has already expired, as long as the application for extension is made before the expiry. If the court decides to extend the period after it has expired, the order comes back into force from the date of the decision or such other date as the court specifies. 5
10

[7] Section 18

Omit the section. Insert instead:

18 Revocation of community service orders

- (1) A court may do any of the following in relation to a community service order in force in respect of a person if it appears in the interests of justice to do so, having regard to circumstances that have arisen since the order was made: 15
- (a) revoke the order,
- (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 if the order had not been made. 20
- (2) A court may do any of those things only: 25
- (a) on the application of the person in respect of whom the community service order is in force or the assigned officer, and
- (b) if the court is the court that made the order (even if differently constituted) or is an equivalent or superior court. 30

[8] Section 21 Notification of amendment or revocation of orders

Omit "and (if that court is not the supervising court) sent to the clerk of the supervising court".

[9] Section 22 Substitution of new supervising court

Omit the section.

5

[10] Section 23 Breach of requirements

Insert after section 23 (3):

(4) A failure to comply with one community service order in force in respect of a person or with any requirement made by or under this Act or the regulations in respect of the order is taken to be a failure to comply with every community service order made in respect of that person and still in force at the time of the first-mentioned failure.

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(5) Subsection (4) applies whether the hours of community service work under one or more of the orders are to be performed in addition to or concurrently with the hours under the other order or orders and even if the person has not started performing the work under one or more of the orders.

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[11] Section 24 Issue of summons or warrant for failure to comply

Omit "the supervising court" wherever occurring.
Insert instead "a specified court".

[12] Section 24 (2) and (3)

Insert at the end of section 24:

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(2) A court specified by a justice under this section must be the court that made the order (even if differently constituted) or an equivalent or superior court.

- (3) A complaint or summons referred to in this section may specify more than one failure to comply with an order or requirement, or a failure to comply with more than one order or requirement.

[13] Section 25 5

Omit the section. Insert instead:

25 Conviction for breach—how dealt with

- (1) If a court convicts a person of an offence under section 23 (1), the court may:
- (a) without prejudice to the continuation of the community service order, impose on the person a fine not exceeding 2.5 penalty units, or 10
 - (b) revoke the order (if still in force) 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 if the order had not been made, or 15
 - (c) take no action.
- (2) In proceedings before the District Court or Supreme Court under this section, any question whether a person has failed to comply with a community service order, or with a requirement made by or under this Act or the regulations in respect of the order, is to be determined by the judge and not by the verdict of a jury. 20 25
- (3) Once a court has convicted a person of an offence under section 23 (1) in relation to one community service order, the court may take action under subsection (1) in relation to any other community service orders in force in respect of the person. The court may take different action under subsection (1) in relation to each order. 30

[14] Part 4, heading

Omit “Regulations”. Insert instead “Miscellaneous”.

[15] Section 28 and Schedule 1

Insert after section 27:

28 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions 5
(Section 28)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

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- (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: 15

- (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 20

- (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. 25

2 Provisions consequent on enactment of Schedule 1 to Sentencing Legislation Amendment Act 1996

- (1) Section 7 (4) applies in respect of any order only if the order is made after the commencement of that subsection. 30

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Schedule 1 Miscellaneous amendments to Community Service Orders Act 1979

- (2) Section 12, as amended by the *Sentencing Legislation Amendment Act 1996*, applies only in respect of a community service order that is made after the amendment takes effect.
- (3) A direction in force under section 14 at the commencement of Schedule 1 [4] to the *Sentencing Legislation Amendment Act 1996* continues in force, as if section 15 had not been amended by that item, until it expires or a new direction is given in its place. 5
- (4) Section 17 (2) extends to apply to any community service order that is in force immediately before the commencement of that subsection. 10
- (5) Section 23 (4) and (5) as inserted by the *Sentencing Legislation Amendment Act 1996* apply to a failure to comply that occurs after the commencement of those subsections, but in respect of any community service order in force at the time of the failure to comply, whenever the order was made. 15

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

(Section 4)

- [1] Section 13 Number of hours of community service work** 5
- Insert at the end of section 13:
- (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. 10
- [2] Section 18 Directions** 15
- Omit section 18 (1) and (1A). Insert instead:
- (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. 20
- (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: 25
- (a) at facilities (within the meaning of the *Children (Care and Protection) Act 1987*) operated by officers, or 30
- (b) for such authorities of the State, in such circumstances, as are prescribed by the regulations.

[3] Section 20

Omit the section. Insert instead:

20 Extension of children's community service orders

- (1) The Director-General may extend the period for which a children's community service order is to remain in force if it appears to the Director-General that it would, having regard to circumstances that have arisen since the order was made, be in the interests of justice to do so. 5
- (2) The Director-General may do so only on the application of the assigned officer or the person in respect of whom the order was made. 10
- (3) The Director-General may extend the period even if the order has already expired, as long as the application for extension is made before the expiry. If the Director-General decides to extend the period after it has expired, the order comes back into force from the date of the decision or such other date as the Director-General specifies. 15

[4] Section 23 Issue of summons or warrant—application under section 21 20

Omit "20 or" from section 23 (1).

[5] Section 24 Breach of requirements

Insert after section 24 (3):

- (4) A failure to comply with one children's community service order in force in respect of a person or with any requirement made by or under this Act or the regulations in respect of the order is taken to be a failure to comply with every children's community service order made in respect of that person and still in force at the time of the first-mentioned failure. 25
30
- (5) Subsection (4) applies whether the hours of community service work under one or more of the orders are to be performed in addition to or concurrently with the hours under the other order or orders and even if the person has not started performing the work under one or more of the orders. 35

[6] Section 25 Issue of summons or warrant—failure to comply with children’s community service orders made by court

Insert after section 25 (2):

- (3) A complaint or summons referred to in this section may specify more than one failure to comply with an order or requirement, or a failure to comply with more than one order or requirement. 5

[7] Section 27

Omit the section. Insert instead:

27 Notice of revocation of children’s community service orders 10

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. 15

[8] Section 30 and Schedule 1

Insert after section 29:

30 Savings and transitional provisions
Schedule 1 has effect. 20

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: 25

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- (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. 30

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

- (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 5
 - (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. 10

2 Provisions consequent on enactment of Schedule 2 to Sentencing Legislation Amendment Act 1996

- (1) Section 13 (5) applies in respect of any order only if the order is made after the commencement of that subsection. 15
- (2) A direction in force under section 17 at the commencement of Schedule 2 [2] to the *Sentencing Legislation Amendment Act 1996* 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. 20
- (3) The repeal and re-enactment of section 20 by the *Sentencing Legislation Amendment Act 1996* do not affect any extension ordered before the repeal and re-enactment take effect. 25
- (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 1996* 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. 30

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

(Section 3)

[1] Part 4 (sections 26L–26Q)

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Insert after section 26K:

Part 4 Liability in respect of work incidents

26L Definition

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

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- (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.

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26M 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 community service order gives rise to any civil liability on the part of the person for whom the work is performed.

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(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.

25

(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.

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26N Act or omission of supervisor of community service work

- (1) No act or omission of a person for whom work is performed under a 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. 5
- (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. 10
- (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. 15

26O Limits to common law damages for injury to offender

- (1) Divisions 1 and 3 of Part 5 of the *Workers Compensation Act 1987* apply to any award of damages in respect of an injury to a person (or death of a person resulting from or caused by an injury), being an injury to which this section applies, in the same way as they apply to an award of damages referred to in those Divisions. 20
- (2) In subsection (1):
- award of damages* (where firstly occurring) means an award that is made against the person for whom the work is performed, against the Crown, against the Director-General or against an officer or other employee concerned in the administration of this Act. 25
- injury to which this section applies:* 30
- (a) means a personal injury arising out of or in the course of a person's performance of work under a community service order, and

- (b) includes:
 - (i) a disease that is contracted by the person in the course of the performance of such work and to which the performance of the work was a contributing factor, and 5
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the performance of the work was a contributing factor to the aggravation, acceleration, exacerbation or deterioration. 10
- (3) In the application of Division 3 of Part 5 of the *Workers Compensation Act 1987*:
 - (a) a reference to a worker is taken to be a reference to a person who performs work under a community service order, and 15
 - (b) a reference to a worker's employer is taken to be a reference to the person for whom the work is performed (except in section 151L where it refers to the Director-General or the Crown), and
 - (c) a reference in section 151N of that Act to a person's contributory negligence, or in section 151O of that Act to a person's negligence in failing to take sufficient care for his or her own safety, is taken to include any failure on the part of the person to make a disclosure in accordance with the person's duty under section 26P of this Act. 20 25
- (4) In the application of section 151L of that Act, a reference to the employer's workplace rehabilitation program is taken to be a reference to a rehabilitation program (if any) offered by the Director-General to a person who performs work under a community service order. 30
- (5) This section does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

26P Disclosure of material facts about health 35

- (1) A person in respect of whom a 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:

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

- (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. 5

26Q 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. 10

[2] Part 4 Regulations

Renumber Part 4 as Part 5. 15

[3] Schedule 1, clause 3

Insert at the end of Schedule 1:

3 Provisions consequent on enactment of Schedule 3 to Sentencing Legislation Amendment Act 1996

Part 4 (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. 20

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

(Section 4)

[1] Part 6 (sections 26B–26G) 5

Insert after Part 5:

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 15
- (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. 20
- (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. 25
- (3) Subsections (1) and (2) do not have effect if:
 - (a) the work concerned was not work approved by the Director-General, or 30

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

- (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. 5

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. 10
- (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. 15
- (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. 20

26E Limits to common law damages for injury to offender

- (1) Divisions 1 and 3 of Part 5 of the *Workers Compensation Act 1987* apply to any award of damages in respect of an injury to a person (or death of a person resulting from or caused by an injury), being an injury to which this section applies, in the same way as they apply to an award of damages referred to in those Divisions. 25
- (2) In subsection (1):
- award of damages** (where firstly occurring) means an award that is made against the person for whom the work is performed, against the Crown, against the Director-General or against an officer or other employee concerned in the administration of this Act. 30

injury to which this section applies:

- (a) means a personal injury arising out of or in the course of a person's performance of work under a children's community service order, and
- (b) includes:
 - (i) a disease that is contracted by the person in the course of the performance of such work and to which the performance of the work was a contributing factor, and
 - (ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the performance of the work was a contributing factor to the aggravation, acceleration, exacerbation or deterioration.
- (3) In the application of Division 3 of Part 5 of the *Workers Compensation Act 1987*:
 - (a) a reference to a worker is taken to be a reference to a person who performs work under a children's community service order, and
 - (b) a reference to a worker's employer is taken to be a reference to the person for whom the work is performed (except in section 151L where it refers to the Director-General or the Crown), and
 - (c) a reference in section 151N of that Act to a person's contributory negligence, or in section 151O of that Act to a person's negligence in failing to take sufficient care for his or her own safety, is taken to include any failure on the part of the person to make a disclosure in accordance with the person's duty under section 26F of this Act.
- (4) In the application of section 151L of that Act, a reference to the employer's workplace rehabilitation program is taken to be a reference to a rehabilitation program (if any) offered by the Director-General to a person who performs work under a children's community service order.
- (5) This section does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

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: 5
- (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. 10

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. 15

[2] Part 6 Miscellaneous

Re-number Part 6 as Part 7. 20

[3] Schedule 1, clause 3

Insert at the end of Schedule 1:

3 Provisions consequent on enactment of Schedule 4 to Sentencing Legislation Amendment Act 1996

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. 25

Schedule 5 Amendment of Periodic Detention of Prisoners Act 1981

(Section 5)

[1] Section 10 Order to participate in activity or work

Omit section 10 (2) and (3). Insert instead:

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- (2) However, the Commissioner must not direct a periodic detainee 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.

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[2] Part 5 (sections 27A–27F)

Insert after section 27:

Part 5 Liability in respect of work incidents

27A Definition

In relation to work performed under an order under section 10 (1) (b), a reference in this Part to a *person for whom work is performed* includes any person (including a corporation):

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- (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.

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27B Act or omission of periodic detainee

- (1) No act or omission of a person that occurs in the course of the person's performance of work under an order under section 10 (1) (b) gives rise to any civil liability on the part of the person for whom the work is performed.

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- (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 Commissioner, or 5
 - (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 neither approved nor required by the Commissioner. 10

27C Act or omission of supervisor of periodic detainee

- (1) No act or omission of a person for whom work is performed under an order under section 10 (1) (b) 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. 15
- (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. 20
- (3) Subsections (1) and (2) do not have effect if:
 - (a) the work concerned was not work approved by the Commissioner, 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. 25

27D Limits to common law damages for injury to offender

- (1) Divisions 1 and 3 of Part 5 of the *Workers Compensation Act 1987* apply to any award of damages in respect of an injury to a person (or death of a person resulting from or caused by an injury), being an injury to which this section applies, in the same way as they apply to an award of damages referred to in those Divisions. 30

(2) In subsection (1):

award of damages (where firstly occurring) means an award that is made against the person for whom the work is performed, against the Crown, against the Commissioner or against an officer or other employee concerned in the administration of this Act. 5

injury to which this section applies:

(a) means a personal injury arising out of or in the course of a person's performance of work under an order under section 10 (1) (b), and 10

(b) includes:

(i) a disease that is contracted by the person in the course of the performance of such work and to which the performance of the work was a contributing factor, and 15

(ii) the aggravation, acceleration, exacerbation or deterioration of any disease, where the performance of the work was a contributing factor to the aggravation, acceleration, exacerbation or deterioration. 20

(3) In the application of Division 3 of Part 5 of the *Workers Compensation Act 1987*:

(a) a reference to a worker is taken to be a reference to a person who performs work under an order under section 10 (1) (b), and 25

(b) a reference to a worker's employer is taken to be a reference to the person for whom the work is performed (except in section 151L where it refers to the Commissioner or the Crown), and

(c) a reference in section 151N of that Act to a person's contributory negligence, or in section 151O of that Act to a person's negligence in failing to take sufficient care for his or her own safety, is taken to include any failure on the part of the person to make a disclosure in accordance with the person's duty under section 27E of this Act. 30
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Schedule 5 Amendment of Periodic Detention of Prisoners Act 1981

- (4) In the application of section 151L of that Act, a reference to the employer's workplace rehabilitation program is taken to be a reference to a rehabilitation program (if any) offered by the Commissioner to a person who performs work under an order under section 10 (1) (b). 5
- (5) This section does not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies.

27E Disclosure of material facts about health

- (1) A person in respect of whom an order under section 10 (1) (b) is in force has, while the order is in force, a duty to disclose as soon as possible to the Commissioner:
- (a) any condition of the person that is a condition to which this section applies, or
- (b) any substantial change in that condition. 15
- (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. 20

27F Settlement of claims

The Commissioner may, on behalf of the Crown, settle any action that lies against the Crown because of this Part. The Commissioner may do so on such terms as he or she thinks fit. 25

[3] Part 5 Miscellaneous

Renumber Part 5 as Part 6.

[4] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Sentencing Legislation Amendment Act 1996 30

[5] Schedule 2, Part 5

Insert after clause 17:

**Part 5 Provisions consequent on enactment of
Schedule 5 to Sentencing Legislation
Amendment Act 1996**

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18 Restriction on type of work

The amendment of section 10 by the *Sentencing Legislation Amendment Act 1996* does not affect any direction given under section 10 (1) before the amendment takes effect.

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19 Application of Part 5

Part 5 (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.

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Schedule 6 Amendment of Home Detention Act 1996

(Section 6)

[1] Sections 27 and 28

Insert after section 26: 5

27 Application of liability provisions of Community Service Orders Act 1979

Part 4 (Liability in respect of work incidents) of the *Community Service Orders Act 1979* applies in respect of the performance of community service work under this Act as if the work were performed under that Act. 10

28 Savings and transitional provisions

Schedule 1 has effect.

[2] Sections 27 and 28

Renumber sections 27 and 28 (as presently numbered) as sections 29 and 30 (respectively). 15

[3] Section 27 (as presently numbered)

Omit "Schedule 1". Insert instead "Schedule 2".

[4] Schedule 1

Insert after section 28 (as presently numbered): 20

Schedule 1 Savings and transitional provisions

(Section 28)

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 25

Sentencing Legislation Amendment Act 1996

(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. 30

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- (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 5
 - (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. 10

2 Application of section 27

Section 27 (Application of liability provisions of *Community Service Orders Act 1979*) applies only in respect of an act or omission that occurs after the commencement of that section. 15

[5] Schedule 1 Amendment of Bail Act 1978

Renumber Schedule 1 (as presently numbered) as Schedule 2.

[6] Schedule 1 (as presently numbered)

Omit "(Section 27)". Insert instead "(Section 29)". 20

