



New South Wales

# Children (Community Service Orders) Regulation 2015

under the

Children (Community Service Orders) Act 1987

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

DAVID ELLIOTT, MP  
Minister for Corrections

## Explanatory note

The object of this Regulation is to remake, with minor changes, the provisions of the *Children (Community Service Orders) Regulation 2010* which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) conditions relating to the performance of community service work, including maximum hours of work to be performed each day, the taking of tea breaks and meal breaks and requirements to be observed by offenders performing such work,
- (b) the service of documents,
- (c) 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,
- (d) the making of applications for the extension or revocation of children's community service orders,
- (e) savings and formal matters.

This Regulation is made under the *Children (Community Service Orders) Act 1987*, including sections 16 (1) 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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## Children (Community Service Orders) Regulation 2015

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Children (Community Service Orders) Regulation 2015*.

#### 2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Children (Community Service Orders) Regulation 2010* which is repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*.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.

**Secretary** means the Secretary of the Department.

**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.

(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**

The maximum number of hours of community service work that an offender may be required to perform in any one day is 8. However, an offender may agree to perform more community service work in any one day.

### **5 Tea breaks and meal breaks**

- (1) An offender is to be given such tea breaks (at a rate of no more than 5 minutes for each hour for which the offender is actually engaged in performing community service work) as the offender's assigned officer or supervisor thinks fit.
- (2) An offender who has performed community service work continuously (or interrupted only by a tea break to which the offender is entitled under subclause (1)) 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 while actually engaged in performing community service work,
  - (b) time spent by the offender in travelling between the offender's place of residence and the offender's work site,
  - (c) time spent by the offender in having any meal break or tea break,
  - (d) time spent by the offender at the offender's work site (otherwise than as referred to in paragraph (a) or (c)) in accordance with a direction given by the assigned officer or a supervisor,
  - (e) 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 at a work site (whether or not the time is spent in performing community service work) is to be deducted from any computation of the time spent by the offender in performing community service work if the offender, while at the work site:
  - (a) is under the influence of drugs or alcohol, or
  - (b) conducts himself or herself 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 such standards of dress, cleanliness and conduct as the assigned officer may from time to time specify, and
  - (b) keep in good order and condition such clothing and equipment as may be issued to the offender in connection with the performance of that work.
- (2) An offender must not damage or deface any 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) If an offender is directed to do anything that the offender is incapable of doing, the offender must, as soon as practicable, advise the assigned officer or supervisor of that fact.
- (2) An assigned officer or supervisor may, if satisfied that an offender is incapable of doing something that the offender has been directed to do, relieve the offender from the obligation to comply with the direction even though the direction may have been given by some other assigned officer or supervisor.
- (3) Before relieving an offender from the obligation to comply with a direction, or as a condition of so relieving the offender, 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, in such circumstances as 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**

- (1) An assigned officer may, in accordance with section 18 of the Act, direct an offender to perform work for:
  - (a) a Public Service agency specified in Schedule 1 to the *Government Sector Employment Act 2013*, or
  - (b) a council or county council within the meaning of the *Local Government Act 1993*, or
  - (c) a non-profit organisation.
- (2) Such a direction may be given only if arrangements satisfactory to the Secretary have been made in relation to the availability, location and type of work to be performed by offenders.

## **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 any 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 such remuneration (including travelling and subsistence allowances) as the Secretary may determine 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 any 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 such remuneration (including travelling and subsistence allowances) as the Secretary may determine 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 such form as the Secretary may from time to time determine.

### **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 such form as the President of the Children's Court may from time to time determine.

### **17 Savings**

Any act, matter or thing that, immediately before the repeal of the *Children (Community Service Orders) Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.