



## NORTHERN TERRITORY OF AUSTRALIA

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No. 57 of 1986

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### AN ACT

to amend the *Criminal Law (Conditional Release of Offenders) Act*

[Assented to 19 December 1986]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

#### 1. SHORT TITLE

This Act may be cited as the *Criminal Law (Conditional Release of Offenders) Amendment Act 1986*.

#### 2. COMMENCEMENT

(1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is given.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3. PRINCIPAL ACT

The *Criminal Law (Conditional Release of Offenders) Act* is in this Act referred to as the Principal Act.

#### 4. DEFINITIONS

Section 3 of the Principal Act is amended -

(a) by inserting after the definition of "attendance order" the following:

"'clerk' means a Clerk within the meaning of the *Justices Act*";

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- (b) by omitting the definition of "Director" and substituting the following:

"'Director' means the Director of Correctional Services appointed under the Prisons (Correctional Services) Act;"; and

- (c) by inserting after the definition of "law of the Territory" the following:

"'Master' has the same meaning as in the Supreme Court Act;".

5. NEW PART

The Principal Act is amended by inserting after Part III the following:

"PART IIIA - REMISSION OF SENTENCES AND FINES

"8A. REMISSION OF SENTENCES

"(1) In this section 'remission order' means an order made under subsection (2).

"(2) The Administrator may, by writing under his hand, order the remission, with or without conditions, of a sentence of imprisonment under, or in respect of an offence against, a law of the Territory.

"(3) The Administrator may, by writing under his hand -

- (a) vary or revoke any or all of the conditions to which a remission order is subject;
- (b) impose additional conditions on a remission order; or
- (c) revoke a remission order.

"(4) Where a remission order has been -

- (a) revoked; or
- (b) contravened or a condition to which the remission order is subject has not been complied with,

a member of the Police Force may, without warrant, arrest the person released under the remission order.

"(5) Where information is laid before a Justice alleging that a remission order has been -

- (a) revoked; or

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- (b) contravened or a condition to which the remission order is subject has not been complied with,

the Justice may issue a warrant for the arrest of the person released under the remission order.

"(6) A Justice shall not issue a warrant under subsection (5) unless -

- (a) the informant and any other person furnishing information required by the Justice concerning the issue of the warrant furnishes the information on oath; and
- (b) the Justice is satisfied that there are reasonable grounds for issuing the warrant.

"(7) Where a person has been arrested pursuant to subsection (4)(a) or (5)(a), he shall, as soon as practicable, be brought before a magistrate and the magistrate shall, if satisfied that the remission order has been revoked, issue a warrant for the commitment of the person to prison to serve the part of the term of imprisonment that the person had not served at the time the remission order was made.

"(8) Where a person has been arrested pursuant to subsection (4)(b) or (5)(b), he shall, as soon as practicable, be brought before a magistrate and, if the magistrate is satisfied that the person brought before him has, without lawful excuse, contravened, or failed to comply with a condition of, the remission order, the magistrate may revoke the remission order.

"(9) A person brought before a magistrate in accordance with subsection (7) or (8) shall, unless the magistrate determines otherwise, be kept in custody until the magistrate has determined the matter.

"(10) Where, under subsection (8), a remission order is revoked in respect of a person who was serving a term of imprisonment at the time that the remission order was made the magistrate may issue a warrant for the commitment of the person to prison to serve the part of the term of imprisonment that he had not served at the time that the remission order was made.

"(11) Where, under subsection (3) or (8), a remission order is revoked in respect of a person who was detained in prison pursuant to section 398 of the Criminal Code at the time the remission order was made, the person may, subject to subsection (12), be detained in prison during the pleasure of the Administrator as if the remission order had not been made.

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"(12) Where a magistrate acting in accordance with subsection (8) revokes a remission order, the person in respect of whom the remission order was made may appeal to the Supreme Court against the revocation, and the Supreme Court shall, if it is -

- (a) satisfied that the grounds under which the remission order was revoked have been established - confirm the revocation; or
- (b) not so satisfied - order that the revocation cease to have effect.

"(13) Division 2 of Part VI of the *Justices Act* applies to and in relation to an appeal made under subsection (12).

"8B. REMISSION OF FINES

"The Administrator may remit a fine, penalty or forfeiture due or accrued to the Crown under, or in respect of an offence against, a law of the Territory.

"8C. PREROGATIVE OF MERCY

"Nothing in this Part affects the prerogative of mercy."

6. COMMUNITY SERVICE ORDERS

Section 20(1) of the Principal Act is amended -

- (a) by omitting "(otherwise than in default of payment of a fine)"; and
- (b) by omitting "not more than 240" and substituting "not more than 480".

7. CIRCUMSTANCES IN WHICH A COMMUNITY SERVICE ORDER MAY BE MADE BY COURT

Section 21 of the Principal Act is amended -

- (a) by omitting from subsection (2) "and release the offender on bail, with or without sureties," and substituting "and grant the offender bail in accordance with the *Bail Act*"; and
- (b) by omitting from subsection (3)(c) "Crown Solicitor" and substituting "Director".

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8. NEW SECTIONS

The Principal Act is amended by inserting after section 21 the following:

"21A. CIRCUMSTANCES IN WHICH A COMMUNITY SERVICE ORDER  
MAY BE MADE BY DIRECTOR

"(1) Notwithstanding that -

- (a) a court has adjudged the payment of a fine or sum of money by a conviction or order; or
- (b) on default in the payment of a fine or sum of money adjudged by a court to be paid, a warrant of commitment under section 86 of the *Justices Act* has been issued or executed,

an offender, in respect of whom the conviction or order or warrant relates, may apply to the Director for approval to perform unpaid approved work in accordance with this Part in satisfaction of each such fine or sum of money,

"(2) Where, under subsection (1), an offender applies to the Director, the Director may, subject to this section, make a community service order in respect of the offender.

"(3) The Director shall not make a community service order under this section in respect of an offender unless -

(a) he is satisfied -

- (i) the offender is a suitable person to perform approved work; and
- (ii) arrangements have been or will be made for the offender to perform approved work; and

(b) the offender consents to the terms and conditions of the order.

"(4) Where the Director proposes to make a community service order under this section, he shall, before making the order, explain or cause to be explained to the offender in respect of whom it is proposed to make the order, in language likely to be readily understood by him -

- (a) the purpose and effect of the order;
- (b) the consequences that may follow if he fails to comply with the order; and
- (c) his rights under section 21C.

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"(5) The Director shall, on making a community service order under this section, notify the court which adjudged the payment of the fine or sum of money in respect of which the order is made of the making of that order.

"(6) Subject to section 21D(4), a court on receiving notification by the Director under subsection (5) shall, in respect of the offender to whom the community service order relates, take no further action to enforce payment of the fine or sum of money adjudged by the court to be paid in respect of which fine or sum the order relates.

"(7) Where an offender in respect of whom a community service order is made under this section is in prison, he shall, on the making of that order, be discharged from prison unless he is in prison for another offence other than that in respect of which the order is made.

"21B. ORDER BY DIRECTOR

"(1) Where the Director makes a community service order under section 21A, the offender shall satisfy the payment of the fine or sum of money adjudged by the court to be paid by performing the prescribed number of hours of work.

"(2) The Director shall not make a community service order under section 21A where -

- (a) in accordance with subsection (1), the hours of work to be performed by the offender under that order would be, in the aggregate, more than 480; or
- (b) there is or are in force in respect of an offender one or more other community service orders and the hours of work to be performed by that offender in accordance with subsection (1) together with those hours to be performed under the previous order or orders would be, in the aggregate, more than 480.

(3) For the purposes of subsection (1), where the Director makes a community service order under section 21A in respect of an offender who has been imprisoned under a warrant of commitment issued under section 86 of the *Justices Act*, the amount of the fine or sum of money adjudged by the court to be paid in respect of which the order is made shall be reduced by the prescribed amount for each day, excluding the first day, the offender is in prison under that warrant.

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"21C. PAYMENT OF FINE OR SUM OF MONEY

"(1) An offender in respect of whom a community service order under section 21A is in force may, at any time while the order is in force, apply to the court which made the order or conviction adjudging the payment of the fine or sum of money by that offender, to pay the fine or sum of money.

"(2) An application under subsection (1) shall be made, where the court which made the order or conviction was -

(a) the Supreme Court - to the Master; or

(b) the court of summary jurisdiction - to the clerk.

"(3) Where the Master or clerk receives an application under subsection (1) he shall take into account, in determining the amount to be paid by the offender in satisfaction of the fine or sum of money, the hours of work, if any, performed by that offender under the community service order.

"(4) The Director shall, for the purposes of subsection (3), provide the Master or clerk with a written statement providing details of the hours of work performed by the offender under the community service order.

"(5) In determining the amount of a fine or sum of money to be paid by an offender under subsection (3), the Master or clerk shall reduce the amount of the fine or sum of money adjudged by the court to be paid by the prescribed amount for each 8 hours of work completed by the offender under the community service order.

"21D. BREACH OF COMMUNITY SERVICE ORDER MADE UNDER SECTION 21A

"(1) The Director may revoke a community service order made under section 21A where he is satisfied on reasonable grounds that the offender in respect of whom the order was made is in breach of the order as specified in section 25(1).

"(2) The Director shall, where he revokes a community service order under subsection (1) -

(a) serve notice of the revocation on the offender in respect of whom the order was made; and

(b) notify the Master or the clerk of the court which adjudged the fine or sum of money to be paid of the revocation of the order.

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"(3) A notice of revocation under subsection (2)(a) may be served on an offender by -

- (a) delivering it to him personally;
- (b) posting it to him at his last-known or most usual place of residence or business; or
- (c) leaving it for him at his last-known or most usual place of residence or business with some other person apparently resident or employed there and who has apparently attained the age of 16 years.

"(4) Where the Director revokes a community service order under subsection (1), the order shall be deemed, for the purposes of the enforcement of the payment of the fine or sum of money adjudged by the court to be paid, to have never been made, and -

- (a) the total amount of that fine or sum of money may be recovered in accordance with the *Justices Act*; or
- (b) where the offender had been released from prison on the making of that order, he may be arrested under the warrant of commitment issued under section 86 of the *Justices Act* under which authority he was previously imprisoned, and shall be imprisoned for the term specified in that warrant less the period which the offender had previously spent in prison under that warrant.

"(5) Subsection (4) applies notwithstanding that the offender has performed work under the community service order.

"21E. COMPLETION OF WORK UNDER COMMUNITY SERVICE ORDER

"(1) An offender in respect of whom a community service order is made under section 21A who -

- (a) performs the hours of work required under that order; and
- (b) complies with the conditions of the order,

shall be deemed to have paid the fine or sum of money adjudged to be paid by the conviction or order of the court.

"(2) Where an offender in respect of whom a community service order under section 21A is made performs the hours of work required to be performed under the order and complies with the conditions of that order, the Director shall, by notice in writing, advise the Master or the clerk of the court which adjudged the fine or sum of

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money to be paid by that offender that the offender has complied with the order and the Master or clerk shall note that fact on the court record."

9. WHERE MORE THAN ONE ORDER MADE

Section 22 of the Principal Act is amended by omitting "exceeds 240" (twice occurring) and substituting "exceeds 480".

10. DUTIES OF OFFENDER AND FIELD OFFICER IN CARRYING OUT ORDER

Section 23 of the Principal Act is amended -

- (a) by omitting from subsection (1)(c) "a field officer" and substituting "a field officer or Supervising Officer"; and
- (b) by omitting from subsection (3) "An offender shall not" and substituting "Except where he consents, an offender shall not".

11. DURATION OF COMMUNITY SERVICE ORDER

Section 24 of the Principal Act is amended by omitting paragraph (b) and substituting the following:

"(b) the order is discharged or revoked under this Part; or".

12. REPEAL AND SUBSTITUTION

Section 25 of the Principal Act is repealed and the following substituted:

"25. BREACH OF ORDER

"(1) For the purposes of this section and section 21D, an offender in respect of whom a community service order is in force who -

- (a) fails to attend as required by, or otherwise fails to comply with, that order;
- (b) fails to carry out his obligations under section 23(1);
- (c) disturbs or interferes with any other person working or doing anything under an attendance order or community service order;
- (d) assaults, threatens, insults or uses abusive language to a Field Officer or Supervising Officer;
- (e) changes his address for the purposes of evading the execution of this Act;

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(f) commits a breach of the Regulations made under this Act; or

(g) commits an offence against a law of the Territory or of the Commonwealth during a time when he is performing work under the order,

is in breach of that order.

"(2) Where a Justice is satisfied on reasonable grounds by an information laid before him that an offender in respect of whom a community service order under section 20 has been made is in breach of the order as specified in subsection (1), he may -

(a) issue a summons directing the offender to appear at a court on a date and at a time specified in the summons to show cause why he should not be further dealt with under this section; or

(b) where the information is on oath and he is satisfied that proceedings against the offender by summons might not be effective, issue a warrant for the arrest of the offender.

"(3) Where an offender who is served with a summons issued under subsection (2)(a) fails to attend before a court as required by that subsection, that court may, on proof of service of the summons, issue a warrant for the arrest of that offender.

"(4) Where an offender is arrested in pursuance of a warrant issued under this section, he shall, as soon as practicable, be brought before a Justice who shall commit the offender to appear before the court of summary jurisdiction or the Supreme Court there to be dealt with and may -

(a) grant him bail in accordance with the *Bail Act*; or

(b) remand him in custody.

"(5) Where an offender appears before a court to be dealt with in pursuance of this section, and the court is satisfied, after hearing such evidence as it may require, that the offender is in breach of the community service order made under section 20 in respect of him, the court shall commit him to prison for such term as would equal one day of imprisonment for each 8 hours or part thereof of work not performed under the order or to a term of 7 days imprisonment, whichever is the greater.

"(6) For the purpose of determining the number of hours of work not performed by an offender under a community service order, the court may hear evidence from a field officer or such other person as it thinks fit.

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"(7) Where a court imposes a term of imprisonment under subsection (5), the community service order shall be deemed to be revoked and the court -

- (a) may then deal with the offender for the offence in respect of which the community service order was made in any manner in which it could deal with him if it had just convicted him of the offence; and
- (b) at the time of further dealing with the offender for the offence in respect of which the order was made, may take into account -
  - (i) the term of imprisonment imposed for the breach of the order; and
  - (ii) any work performed by the offender under the order.

"(8) In proceedings under subsection (5) -

- (a) an averment of the prosecutor that the offender is the person in respect of whom the relevant community service order was made is evidence of the matter so averred; and
- (b) on the averring of the fact referred to in paragraph (a), the offender may be asked by the court before which he appears or is brought whether he was convicted of the offence in respect of which the relevant community service order was made, and if he admits that conviction no further proof of the conviction so admitted is necessary."

13. REVIEW OF ORDER

Section 26 of the Principal Act is amended -

- (a) by omitting "Crown Solicitor" (wherever occurring) and substituting "Director"; and
- (b) by adding at the end the following:

"(5) At a hearing of an application made to a court under subsection (1), the court may adjourn the hearing to enable it to obtain such notification, report or other information, as it requires.

"(6) Where a court adjourns a hearing of an application under subsection (5), it may grant the offender to whom the application relates bail in accordance with the *Bail Act*."

14. REPEAL AND SUBSTITUTION

Sections 27, 28, 29 and 30 of the Principal Act are repealed and the following substituted:

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"27. COMPENSATION FOR INJURY

"The *Work Health Act* applies to and in relation to an offender performing work under a community service order as if that offender were employed by the Territory to perform that work and, for the purposes of the application of that Act -

- (a) the person shall be deemed to be a worker within the meaning of the Act; and
- (b) the Territory shall be deemed to be employing that offender at a weekly salary of, where the offender is -
  - (i) employed by a person during normal working hours and was so employed during those hours immediately preceding the time he performed work under the order - the amount of his weekly salary or the amount referred to in subparagraph (ii), whichever is the greater; or
  - (ii) unemployed - the amount of the average weekly earnings of all full-time adult employees employed in the Territory as last published by the Australian Statistician for the June quarter before the date on which the offender was injured."

15. MINISTER MAY APPOINT COMMITTEE

Section 31 of the Principal Act is amended by adding at the end the following:

"(4) A person appointed as a member of an advisory committee under subsection (2) is appointed for a period of 3 years and is eligible to be re-appointed."

16. TRANSITIONAL

Where, immediately before the commencement of this Act, there was in force a community service order, that order shall, on the commencement of this Act, continue to be subject to the Principal Act as in force immediately before that commencement as though this Act had not come into operation.

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