

1957

CHILDREN'S SERVICES ACT AND ANOTHER ACT AMENDMENT ACT

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 116 of 1989

An Act to amend the Children's Services Act 1965-1989 in certain particulars and the Young Offenders (Interstate Transfer) Act 1987 in a certain particular

[ASSENTED TO 31ST OCTOBER, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Children's Services Act and Another Act Amendment Act 1989*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act, or such of them as are specified in the Proclamation, shall commence on a day or days appointed by Proclamation.

3. Citation. (1) In this Act the *Children's Services Act 1965-1989* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Children's Services Act 1965-1989*.

4. Amendment of s. 62. Orders on children guilty of offences. Section 62 of the Principal Act is amended in subsection (1)—

(a) by inserting after paragraph (h) the following paragraph:—

“(ha) may make in relation to the child a community service order as prescribed by this Act notwithstanding that the child will have ceased to be a child before he has complied with the order;”;

(b) adding to paragraph (k), after the words “two years”, where they lastly occur, the following words:—

“; or

(iv) make in relation to the child a community service order as prescribed by this Act notwithstanding that the child will have ceased to be a child before he has complied with the order”;

(c) omitting from the paragraph immediately following paragraph (k) the words “paragraphs (a) to (k)” and substituting the words “the foregoing provisions”.

5. New ss. 63A to 63L. The Principal Act is amended by inserting after section 63 the following sections:—

“**63A. Nature and requirements of community service order.**

(1) The order referred to in section 62 (1) and elsewhere in this Act as a community service order is an order that requires the child to whom it relates to perform unpaid community service in accordance with this Act for the number of hours specified in the order.

The expression “community service” means activities for the time being declared by the Director to be community service.

- (2) A community service order shall contain requirements—
 - (a) that the child report in person to the Director or his nominee within the time specified therein;
 - (b) that the child perform in a satisfactory manner for the number of hours specified therein such community service as the Director or his agent directs, at such times as the Director or his agent directs;
 - (c) that the child, while performing community service comply with every reasonable direction of the Director or his agent;
 - (d) that the child or his guardian inform the Director or his nominee of every change in the child's place of residence, within 48 hours of the change.
 - (3) In giving directions to a person in relation to his performance of community service—
 - (a) the Director or his agent shall avoid, as far as is practicable—
 - (i) conflict with the religious beliefs and practices of the person or his guardian;
 - (ii) interference with the times at which the person usually attends at his place of employment, or a school or other educational or training establishment;
 - (b) the Director or his agent shall take all reasonable steps to ensure that the person is kept apart from any person under sentence for an offence of which he was convicted as an adult.
 - (4) A person in relation to whom a community service order is in force shall perform the number of hours of community service specified in the order within the period of 12 months commencing on the date of the order or within such extended period as a Children's Court may order pursuant to this Act.
- 63B. Making community service order.** (1) A court shall not make a community service order in relation to a child unless—
- (a) the court is satisfied the child is a suitable person to perform community service;
and
 - (b) the court is satisfied upon consideration of a report of the Director that community service of a suitable nature can be provided for the child.
- (2) Before making a community service order, the court shall explain or cause to be explained to the child, in language likely to be readily understood by him—
- (a) the requirements that would be contained in the order;
 - (b) the consequences that may follow if he should fail to comply with requirements applicable to him in the event of an order being made;

and

(c) that an order may be reviewed on application by him or on his behalf or by the Director.

(3) Where the court makes a community service order it shall cause the order to be forthwith reduced to writing in the prescribed form and shall cause a copy thereof to be given to the child and to the Director.

63C. Multiple or successive community service orders. (1) A court may—

(a) make two or more community service orders in relation to a child before it in respect of two or more offences;

(b) make a community service order in relation to a child who is already subject to a community service order.

(2) Where a court makes one community service order in relation to a child charged before it with one only offence, who is not subject to an existing such order, the number of hours specified in the order, for which the child is required to perform community service, shall be not less than 20 or more than the prescribed maximum.

(3) Where a court makes two or more community service orders in relation to a child charged before it with two or more offences, who is not subject to an existing such order, the aggregate of the hours specified in the orders, for which the child is required to perform community service, shall be not less than 20 or more than the prescribed maximum.

(4) Where a court makes a community service order or community service orders in relation to a child who is subject to an existing such order or existing such orders, the aggregate of the hours specified in all those orders for which the child is required to perform community service, less the number of hours for which the child has performed community service in compliance with the existing such order or orders, shall be not less than 20 or more than the prescribed maximum and to the extent that such aggregate exceeds the prescribed maximum, the order or orders made by the court is or are of no force or effect.

(5) Unless the court that makes a community service order directs otherwise, every such order made in relation to a child or to a person dealt with as a child shall operate cumulatively to every other such order made in relation to the child or person.

(6) The expression "prescribed maximum" means—

(a) where the child ordered to perform community service has attained the age of 15 years at the time the order is made—120 hours;

(b) in any other case—80 hours.

63D. Duration of community service order. A community service order remains in force until—

(a) the person in relation to whom the order is in force has performed community service in accordance with

the requirements specified in paragraphs (b) and (c) of section 63A (2) for the number of hours specified in the order;

(b) the order is discharged pursuant to section 63E or 63G;

or

(c) the expiry of the period within which the community service is required to be performed under the order, as prescribed by section 63A (4),

whichever event first occurs.

63E. Failure to comply with requirement. (1) If it appears to the Director that a person in relation to whom a community service order is in force has contravened or failed to comply with a requirement contained in the order or a prescribed requirement applicable to the person because he is subject to the order, the Director may make application in the prescribed form to a Children's Court for a finding that the person has contravened or failed to comply with the requirement.

The Director shall cause notification of every such application to be given to the person to whom it relates.

(2) If the court, on application made under subsection (1) is satisfied beyond reasonable doubt that the contravention or failure to comply alleged in the application has occurred and so finds it may—

(a) in any case, do one or both of the following:—

(i) increase the number of hours for which the person is required to perform community service under the community service order;

(ii) extend the period within which the community service is required to be performed under the community service order as prescribed by section 63A (4);

or

(b) in the case of a community service order made by a Children's Court, discharge the order and deal with the person to whom the application relates for the offence in respect of which the order was made, as if he were a child who had just been found guilty before the court of that offence;

or

(c) in the case of a community service order made by the Supreme Court or a District Court, if the Children's Court considers that the circumstances of the contravention or failure to comply make it desirable that the order should be discharged and the person to whom the application relates should be dealt with for the offence in respect of which the

order was made, remand the person to appear before the court that made the order;

or

- (d) in any case, upon the undertaking of the person to whom the application relates to comply in all respects with the requirements of the community service order in question and all prescribed requirements applicable to him because he is subject to the order, take no further action.

(3) A Children's Court may exercise in relation to a person before it for the purposes of this section all or any of the powers conferred by section 26 as if the contravention or failure to comply alleged in the relevant application constituted an offence and the person were before the court charged with the offence and, where the person is not a child, as if he were a child.

A Children's Court that remands a person before it for the purposes of this section to the Supreme Court or a District Court may, subject to the *Justices Act 1886-1989*—

- (a) if the person is not in custody, and has not been admitted to bail, in respect of an offence or in respect of his appearance before the court, allow him to go at large;
- (b) if the person is in such custody or has been admitted to such bail—
- (i) remand him in the custody of the Director;
- or
- (ii) grant him bail in accordance with the *Bail Act 1980-1989*;

as if the contravention or failure to comply alleged in the relevant application were an offence and he were being remanded on a charge of the offence and, where the person is not a child, as if he were a child.

(4) If a Children's Court exercises the jurisdiction conferred by paragraph (i) of subsection (2) (a) it shall ensure that the aggregate of hours for which the person concerned is required to perform community service under the community service order in question and under all other community service orders (if any) in force in relation to the person, less the number of hours for which the person has performed community service in compliance with such order or orders, is not more than the prescribed maximum (as defined in section 63C (6)) appropriate to the person at the time of exercise of such jurisdiction and to the extent that such aggregate exceeds the prescribed maximum the order made in exercise of such jurisdiction is of no force or effect.

(5) The Supreme Court or a District Court before which a person appears upon or following his remand thereto under subsection (3), if it is satisfied beyond reasonable doubt of the matter alleged in the application made by the Director in relation to that person under subsection (1), may discharge the community service order made in relation to that person and deal with him

for the offence in respect of which the order was made, as if he were a child who had just been found guilty before that court of that offence.

Proceedings in the Supreme Court or a District Court under this subsection shall be heard and determined by a judge without a jury.

63F. Extension of time for performance of community service.

(1) Where a community service order, made by a Children's Court or any other court, is in force in relation to a person, and on application made by, or on behalf of, the person or by the Director, it appears to a Children's Court that it would be in the interests of justice to do so, having regard to circumstances that have arisen or have become known since the order was made, the court may extend the period within which the community service is required to be performed under the order, as prescribed by section 63A (4).

(2) Notification of the making of an application under subsection (1) shall be given—

- (a) where the application is made by or on behalf of a person in relation to whom a community service order is in force, by the applicant to the Director;
- (b) where the application is made by the Director, by him to the person in relation to whom the community service order is in force.

63G. Discharge etc. of community service order. (1) Where a community service order, made by a Children's Court or any other court, is in force in relation to a person, and on application made by, or on behalf of, the person or by the Director, it appears to a court of the jurisdiction in which the order was made that it would be in the interests of justice to do so, having regard to circumstances that have arisen or have become known since the order was made, the court—

- (a) may reduce (without restriction) the number of hours for which the person is required to perform community service under the order;
- (b) may discharge the order;
- or
- (c) may discharge the order and deal with the person for the offence in respect of which the order was made, as if he were a child who had just been found guilty before that court of that offence.

(2) Notification of the making of an application under subsection (1) shall be given—

- (a) where the application is made by or on behalf of a person in relation to whom a community service order is in force, by the applicant to the Director;
- (b) where the application is made by the Director, by him to the person in relation to whom the community service order is in force.

(3) The Director shall not make an application under subsection (1) on the mere ground that the person in relation to whom the community service order is in force has contravened or failed to comply with a requirement of the order or a prescribed requirement applicable to the person because he is subject to the order.

63H. Extent of compliance with order relevant to further order. In every case where a person in relation to whom a community service order is in force is dealt with by a court for the offence in respect of which the order was made the court, in making an order to replace the community service order shall have regard to—

- (a) the fact that the order was made;
and
- (b) the extent to which the person has complied with the order.

63I. Summons to secure appearance of person subject to community service order. (1) The Children's Court to which application by the Director is made under section 63E, 63F or 63G may order that a summons be issued directed to the person in relation to whom the community service order to which the application relates is in force requiring him to appear at the time and place specified in the summons with a view to his being heard as to why the application should not be granted.

(2) If the person summoned fails to appear as required by the summons, the court may, upon proof of due service of the summons, order that a warrant be issued, directed to all police officers, for the person to be taken into custody and produced to the court.

Any justice may issue such warrant.

(3) The provisions of the *Justices Act 1886-1989* that govern the service and proof of service of a summons issued under that Act apply in relation to a summons issued under this section.

(4) Where a person remanded pursuant to paragraph (c) of section 63E (2) to appear before the Supreme Court or a District Court fails to so appear, the court to which the person was remanded may order that a warrant be issued, directed to all police officers, for the person to be taken into custody and produced to the court.

Any justice may issue such warrant.

(5) Where a person is taken into custody under a warrant referred to in this section the provisions of the *Bail Act 1980-1989* are applicable in respect of him as if he had been apprehended on a charge of an offence.

63J. Proof of facts in proceedings. In proceedings before any court under section 63E, 63F or 63G evidence by affidavit of a person having direct knowledge of the facts deposed to is admissible to prove facts material to any question arising therein

and such proceedings may be determined on such evidence alone, unless the court orders, of its own motion or on the application of any party to the proceedings, in the interests of justice, that a person who has made an affidavit be called for examination, cross-examination and re-examination in the proceedings.

63K. Notice of discharge etc. of community service order. A court that exercises jurisdiction referred to in section 63E, 63F or 63G shall cause notice in writing of the exercise of such jurisdiction to be given to the person subject to the community service order affected by the exercise, to the Director, and, if that court is not the court that made the community service order to which the application for exercise of the jurisdiction applied, to the court that made that order.

63L. Compensation for personal injury. The provisions of the *Workers Compensation Act 1916-1988* apply to a person required to perform community service under a community service order who, for the purpose of the application of those provisions, shall be deemed to be a worker within the meaning of that Act who in respect of his performance of such service works under a contract of service with the Crown.”.

6. Amendment of s. 152. Regulations. Section 152 of the Principal Act is amended by inserting after paragraph 15A the following paragraph:—

“15B. The conditions to be observed by a person in relation to whom a community service order is in force, and, in relation to community service, the standards, management, control and supervision of activities declared by the Director to be community service; the health and safety of persons engaged in activities pursuant to community service orders, the maximum number of hours in any day during which persons may engage in activities pursuant to community service orders; travelling arrangements for persons engaged in activities pursuant to community service orders; the effect of sickness or injury of persons engaged in activities pursuant to community service orders, whether suffered because of such activities or otherwise; the regulation and recording of the hours of community service performed under community service orders;”.

7. Amendment of Act No. 50 of 1987. (1) Section 3 of the *Young Offenders (Interstate Transfer) Act 1987* is amended in the definition “young offender” by designating paragraph (d) as paragraph (e) and inserting after paragraph (c) the following paragraph:—

“(d) in Queensland who is subject to a community service order made in relation to him pursuant to section 62 (1) of the *Children's Services Act 1965-1989*.”.

1966 *Children's Services Act and Another Act Amendment Act*
1989, No. 116

(2) The Act amended by subsection (1) may be cited as the *Young Offenders (Interstate Transfer) Act 1987-1989*.