



ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1981

No. 53 of 1981**An Act to amend the Offenders Probation Act, 1913-1971.***[Assented to 25th June, 1981]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Offenders Probation Act Amendment Act, 1981".

(2) The Offenders Probation Act, 1913-1971, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Offenders Probation Act, 1913-1981".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Amendment of
s. 2—
Interpretation.

3. Section 2 of the principal Act is amended—

(a) by inserting before the definition of "court" the following definitions:

"community service centre" means any premises declared to be a community service centre under this Act:

"community service officer" means a probation officer holding, or acting in, the office of community service officer;;

(b) by inserting after the definition of "court of summary jurisdiction" the following definition:

"Director" means the Director of Correctional Services;;

(c) by striking out the definition of "Minister";

(d) by inserting in paragraph (a) of the definition of "offence" after the passage "indictable offence" the passage "other than murder or treason";

(e) by inserting after the definition of "probationer" the following definitions:

"probation hostel" means any premises declared to be a probation hostel under this Act:

“probation officer” means an officer of the Department of Correctional Services holding, or acting in, the office of probation officer;

(f) by inserting in the definition of “probation order” after the word “offender” the passage “, or for the conditional suspension of a sentence of imprisonment”;

(g) by striking out from the definition of “probative court” the passage “to appear for sentence, or for conviction and sentence, as the case may be”;

and

(h) by striking out the definition of “this Act” and substituting the following definition:

“working day” means any day other than a Saturday, Sunday or public holiday.

4. The following sections are inserted after section 3 of the principal Act:

Insertion of new ss. 3a and 3b.

3a. (1) The Minister may, by notice published in the *Gazette*, declare any premises to be—

Provisions relating to administration.

(a) a community service centre;

or

(b) a probation hostel,

for the purposes of this Act.

(2) The Minister may, by further notice published in the *Gazette*, revoke or vary any declaration under this section.

(3) The Minister may establish such other facilities as he thinks necessary or desirable for the proper administration of this Act.

(4) All community service centres, probation hostels and other facilities established under this section shall be under the control of the Minister.

(5) The Minister shall promote the use of volunteers in the administration of this Act to such extent as he thinks appropriate.

3b. (1) The Director may, by instrument in writing, delegate to any officer of the Department of Correctional Services any of his powers, functions or duties under this Act.

Delegation by the Director.

(2) A delegation under this section is revocable at will, and does not prevent the exercise or performance by the Director of any power, function or duty so delegated.

5. Section 4 of the principal Act is amended—

(a) by striking out from subsection (2c) the passage “The term” and substituting the passage “Subject to subsection (2d), the term”;

(b) by inserting after subsection (2c) the following subsection:

(2d) Where, pursuant to section 5, the court includes in a recognizance a condition requiring the probationer to undertake community service, the term of the recognizance fixed by the court shall not exceed one year.

and

Amendment of s. 4—

Power of courts to permit conditional discharge of offenders, etc., and to suspend sentence of imprisonment.

- (c) by inserting in subsection (4) after the passage "Any order under subsection (3) hereof may" the passage "(unless a condition requiring compliance with the order has been included in a recognizance entered into by the probationer)".

Amendment of
s. 5—
Probation
orders and
conditions of
recognizance.

6. Section 5 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsections:

(1) A recognizance under section 4 may include such of the following conditions as the court thinks appropriate—

- (a) a condition requiring the probationer to be under the supervision of a probation officer for a specified period of time, and to obey the lawful directions of the probation officer;
- (b) a condition requiring the probationer to reside with a specified person, or in a specified probation hostel or other specified place;
- (c) a condition requiring the probationer not to reside with a specified person, or in a specified place or area;
- (d) a condition requiring the probationer to undergo medical or psychiatric treatment in accordance with the terms of the recognizance;
- (e) a condition requiring the probationer to undertake a specified number of hours of community service, not being less than forty nor more than two hundred and forty, and to obey the lawful directions of the community service officer to whom he is assigned;
- (f) a condition requiring the probationer to abstain from drugs of a specified class, or from alcohol;
- (g) a condition requiring the probationer to comply with an order made by the court under section 4 (3);

or

- (h) any other condition that the court thinks necessary or desirable.

(1a) A court shall not include in the same recognizance conditions both under subsection (1) (a) and under subsection (1) (e).

(1b) A court shall not include in a recognizance a condition under subsection (1) (b) unless it is satisfied that accommodation for the probationer is available with the person, or at the probation hostel or other place, specified in the recognizance.

(1c) A court shall not include in a recognizance a condition under subsection (1) (d) unless it is satisfied that treatment of the nature specified in the recognizance has been recommended for the probationer by a legally qualified medical practitioner and is available to the probationer.

(1d) A court shall not include in a recognizance a condition under subsection (1) (e) unless it is satisfied upon a report of a probation officer that there is, or will be within a reasonable period of time, a placement for the probationer at a community service centre reasonably accessible to him and that the community service likely to be undertaken by the probationer is appropriate for him.

(1e) A court making a probation order shall not specify a number of hours of community service to be undertaken by a probationer who is already undertaking, or liable to undertake, community service pursuant to a previous recognizance, where the aggregate of that number and the number of hours specified in the previous recognizance would exceed two hundred and forty.;

and

(b) by inserting in subsection (2) after the passage "the conditions he is required to observe" the passage ", and shall satisfy itself that the probationer understands those conditions, the nature of the requirements that may lawfully be made of him by virtue of those conditions, and the implications of failing to comply with his recognizance".

7. The following sections are inserted after section 5 of the principal Act:

5a. Where a court includes in a recognizance a condition requiring the probationer to be under the supervision of a probation officer, or a condition requiring the probationer to undertake community service, the court shall also include in the recognizance a condition requiring the probationer to report to a specified place within two working days after the day on which the probation order is made, unless within that period the probationer receives a notice in accordance with section 6.

Insertion of new ss. 5a, 5b, 5c and 5d.

Condition relating to reporting to probation centre or community service within two working days.

5b. (1) Where a court includes a condition in a recognizance requiring the probationer to undertake community service, the following provisions shall apply:

Special provisions relating to community service.

(a) the probationer shall be required to perform community service work for eight hours each Saturday, or on such other day as the community service officer to whom he is assigned may direct;

(b) the probationer shall be required to attend at a community service centre or other place for two hours in the evening of one working day in each week in accordance with the directions of the community service officer, or on such other day or at such other time as the community service officer may direct;

(c) the probationer shall, during the two-hour period referred to in paragraph (b), be required to undertake or participate in courses of instruction arranged by the Director;

and

(d) one hour of the eight-hour period referred to in paragraph (a) shall be allocated as a lunch break.

(2) Notwithstanding subsection (1), a probationer shall not be required to perform community service work or attend a community service centre—

(a) at a time that would interfere with his gainful employment, or with a course of training or instruction relating to, or likely to assist him in obtaining, gainful employment;

or

(b) at a time that would cause him to offend against a rule of a religion that he practises.

(3) A probationer is not entitled to any remuneration for community service work performed by him under his recognizance.

(4) Where the Director is of the opinion that a probationer has failed to obey a reasonable direction given to him by his community service officer in relation to his conduct or behaviour while undertaking community service, the Director may, in lieu of commencing proceedings for breach of recognizance, require the probationer, by notice in writing served personally upon him, to perform a number of additional hours of community service work during the term of his recognizance, and any such hours shall, for the purposes of this Act, be deemed to be hours that were specified by the court in the conditions of the recognizance.

(5) The Director shall not exercise his powers under subsection (4) so as to require a probationer to work more than twenty-four additional hours of community service work during the term of his recognizance.

(6) The Director may exercise his powers under subsection (4) notwithstanding that the limit of two hundred and forty hours specified in subsections (1) (e) and (1e) would thereby be exceeded.

(7) Where the Director is of the opinion that a probationer has failed to observe the condition of his recognizance requiring him to undertake community service, he may, by notice in writing served personally or by post upon the probationer, suspend the operation of that condition until the probative court has heard and determined proceedings for breach of the recognizance.

Insurance
cover to be
provided
by Minister.

5c. (1) The Minister shall provide insurance upon such terms and conditions as he thinks fit for probationers in respect of death or injury arising out of, or occurring in the course of, community service undertaken pursuant to recognizances.

(2) The Minister shall provide insurance upon such terms and conditions as he thinks fit for persons appointed as voluntary supervisors of probationers undertaking community service pursuant to recognizances in respect of death or injury arising out of, or occurring in the course of, carrying out their duties as supervisors.

(3) The cost of providing insurance cover under this section shall be borne by the Crown.

Community
service
committees.

5d. (1) The Minister shall establish a community service advisory committee consisting of not less than three, nor more than five, members, of whom—

(a) one shall be appointed by the Minister after consultation with the United Trades and Labor Council;

and

- (b) one shall be a person nominated by the Director.
- (2) The members of the advisory committee shall hold office upon such terms and conditions as the Minister thinks fit.
- (3) The functions of the advisory committee are—
- (a) to formulate guidelines for the approval of projects and tasks suitable for community service under this Act;
 - and
 - (b) to perform such other functions as the Minister may direct.
- (4) The Minister shall establish a community service committee for each community service centre.
- (5) A community service committee shall consist of not less than three, nor more than five, members, of whom—
- (a) one shall be a magistrate;
 - (b) one shall be appointed by the Minister after consultation with the United Trades and Labor Council;
 - and
 - (c) one shall be a person nominated by the Director.
- (6) The members of a community service committee shall hold office upon such terms and conditions as the Minister thinks fit.
- (7) The functions of a community service committee are—
- (a) to approve, within the guidelines formulated by the community service advisory committee, the projects and tasks to be performed as community service work by probationers attending the community service centre in respect of which the committee was established;
 - (b) to keep approved projects and tasks under regular review;
 - (c) to monitor the performance of community service work by probationers attending the centre;
 - and
 - (d) to perform such other functions as the Minister may direct.
- (8) A community service committee shall not approve a project or task for community service unless—
- (a) it is a project or task for the benefit of an organization that does not seek to secure a pecuniary profit for its members;
 - (b) it is a project or task to aid a person, or group of persons, who, in the opinion of the committee, is or are disadvantaged through age, illness, incapacity, poverty or any other adversity;
 - or
 - (c) it is a project or task of a Government Department or instrumentality, or of a local government authority.
- (9) A community service committee shall not approve a project or task for community service work if a probationer, in undertaking that project or task—
- (a) would replace a person who is being paid to perform any work;
 - or

(b) would perform any work for which funds are available.

Repeal of
ss. 6 and 7 and
substitution of
new section.

8. Sections 6 and 7 of the principal Act are repealed and the following sections are substituted:

Minister shall
assign
probation
officer or
community
service officer
to each
probationer.

6. (1) The Minister shall, upon receipt of a copy of a probation order, and may thereafter from time to time, assign the probationer to a probation officer for supervision, or to a community service officer for community service, as the case may require.

(2) The Minister shall cause the probationer to be notified in writing of the name of the probation officer or community service officer to whom he has been assigned, and of the place and time at which he must first report to that officer.

(3) It is the duty of each probation officer and community service officer to use his best endeavours to ensure that any probationer assigned to him complies with the conditions of his recognizance.

Probation
officer or
community
service officer
may give
reasonable
directions to
probationers.

7. (1) A probation officer to whom a probationer has been assigned for supervision may give reasonable directions to the probationer in relation to the following matters:

- (a) requiring the probationer to report to him on a regular basis;
- (b) requiring the probationer to notify him of any change in his place of residence, or in his employment;
- (c) requiring the probationer to obtain his written permission before leaving the State for any reason;
- (d) requiring the probationer to reside, or not to reside, in any place or area, or with any person;
- (e) requiring the probationer to take up, or not to take up, any particular employment, not to give up his employment, or to be punctual in reporting to work;

or

- (f) any other matter (whether pertaining to supervision or any other condition of the recognizance) authorized by the Minister either generally, or in respect of a particular case.

(2) A community service officer to whom a probationer has been assigned for community service may give reasonable directions to the probationer in relation to the following matters:

- (a) requiring the probationer to report to a community service centre or other place at certain times;
- (b) requiring the probationer to notify him of any change in his place of residence or in his employment;
- (c) requiring the probationer to obtain his written permission before leaving the State for any reason;
- (d) requiring the probationer to perform certain projects or tasks for his community service work;
- (e) requiring the probationer to undertake or participate in courses of instruction at a community service centre or other place;

- (f) requiring the probationer to conduct himself or behave in a particular manner while undertaking community service;
or
(g) any other matter (whether pertaining to community service or any other condition of the recognizance) authorized by the Minister either generally, or in respect of a particular case.

9. Section 7a of the principal Act is amended—

- (a) by striking out the passage “,having regard to his rank and the rules of the police force,”;

and

- (b) by striking out the passage “probation officer or other person under whose supervision the probationer has been placed” and substituting the word “Director”.

Amendment of
s. 7a—
Duty of
members of
the police
force.

10. Section 8 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) the passage “vary the conditions” and substituting the passage “revoke or vary any condition”;

- (b) by striking out from paragraph (b) of subsection (1) the passage “under supervision” and substituting the passage “subject to a recognizance”;

and

- (c) by inserting after subsection (2) the following subsection:

(3) Where the Minister is satisfied that the conduct of a probationer under supervision has been such as to make it unnecessary that he should be under supervision any longer, and that it would not be in the best interests of the probationer for him to remain under supervision, the Minister may, by instrument in writing, waive the obligation of the probationer to comply any further with the condition of his recognizance requiring him to be subject to supervision.

Amendment of
s. 8—
Power to
revoke or
vary a
condition of a
recognizance,
or to
discharge
recognizance.

11. Section 9 of the principal Act is amended—

- (a) by inserting in subsection (4) after the passage “on being satisfied that a probationer has failed to observe any condition of his recognizance” the passage “, may estreat the recognizance in such amount as the court thinks fit and”;

- (b) by inserting in paragraph (b) of subsection (4) after the word “shall” the passage “, subject to subsection (5),”;

and

- (c) by inserting after subsection (4) the following subsections:

(5) Where a probationer is subject to a suspended sentence and the probative court is satisfied that the failure of the probationer to observe the conditions of his recognizance is

Amendment of
s. 9—
Provision in
case of
probationer
failing to
observe
conditions of
his
recognizance.

trivial, or that there are proper grounds upon which the failure should be excused, the court—

(a) may refrain from ordering that the sentence be carried into effect;

and

(b) may extend the term of the recognizance by a period not exceeding one year.

(6) Where a probative court orders that a suspended sentence be carried into effect, the court—

(a) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the suspended sentence;

(b) may direct that time spent by the probationer in custody pending determination of the proceedings for breach of recognizance be counted as part of the term of the suspended sentence;

or

(c) may direct that the suspended sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.

(7) Notwithstanding the provisions of this section, where a probationer is found guilty of an offence by a court of a superior jurisdiction to that of the probative court, that firstmentioned court may hear and determine the proceedings for breach of recognizance and, subject to subsection (8), shall for that purpose have all the powers of a probative court under this section.

(8) Where, pursuant to subsection (7), a court sentences a probationer for the original offence, the court may not impose any sentence that the probative court could not have imposed.

(9) Any amount payable upon estreatment of a recognizance shall be recoverable as a fine.

(10) In this section “court of a superior jurisdiction” means—

(a) where the probative court is a court of summary jurisdiction—the Supreme Court or a District Criminal Court;

and

(b) where the probative court is a District Criminal Court—the Supreme Court.

Amendment of
s. 10—
Regulations.

12. Section 10 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1);

and

(b) by striking out subsections (2), (3) and (4).

13. The following section is inserted after section 10 of the principal Act:

Insertion
of new
s. 11.

11. (1) No civil liability shall attach to a probation officer or community service officer for any act or omission by him in good faith and in the exercise of his powers, or discharge of his duties, under this Act.

Immunity
from
liability.

(2) A liability that would, but for subsection (1), attach to a probation officer or community service officer shall attach to the Crown.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor