

PROBATION OF OFFENDERS AMENDMENT ACT 1985

No. 121 of 1985

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PROBATION OF OFFENDERS AMENDMENT ACT 1985

No. 121 of 1985

AN ACT to amend the Probation of Offenders Act 1973, the Jury Act 1899, the Justices Act 1959, and the Tasmanian State Service (Miscellaneous Amendments) Act 1984.

[Royal Assent 28 November 1985]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Probation of Offenders Amendment Act 1985*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Section 18 shall commence on the day fixed by proclamation under section 2 (2) of the *Tasmanian State Service (Miscellaneous Amendments) Act 1984*.

(3) Except as provided in subsections (1) and (2), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Probation of Offenders Act 1973** is referred to as the Principal Act. Principal Act.

* No. 2 of 1973. For this Act, as amended to 1st September 1977, see the continuing Reprint of Statutes. Amended by No. 83 of 1980, No. 99 of 1982, No. 29 of 1984, and No. 5 of 1985.

Amendment of
section 3 of
Principal Act
(Interpre-
tation).

4—Section 3 of the Principal Act is amended as follows:—

- (a) by inserting the following definitions before the definition of “employee”:—
 - “community service order” means an order made under section 11 (1);
 - “community service order committee” means a committee appointed under section 16;
- (b) by omitting “work order;” from the definition of “employee” and substituting “community service order;”;
- (c) by omitting the semicolon at the end of the definition of “supervisor” and substituting a full stop;
- (d) by omitting the definitions of “work order” and “work order committee”.

Amendment of
section 5 of
Principal Act
(Probation
officers’
reports).

5—(1) Section 5 (1) of the Principal Act is amended by omitting “as evidence” from the words following paragraph (b).

- (2) Section 5 (2) of the Principal Act is amended as follows:—
 - (a) by omitting “in evidence”;
 - (b) by inserting “, after having regard to the views (if any) of the probation officer,” after “unless the court”;
 - (c) by omitting “, for special reasons given by the court,”.
- (3) Section 5 (3) of the Principal Act is amended as follows:—
 - (a) by omitting “evidence”, where firstly occurring, and substituting “a written report or an oral statement”;
 - (b) by omitting “that evidence” and substituting “that report or statement”.
- (4) Section 5 (4) of the Principal Act is amended as follows:—
 - (a) by omitting “evidence so received” and substituting “a written report or an oral statement received under subsection (1)”;
 - (b) by omitting “it” and substituting “the evidence provided by that report or statement”.

6—Section 6 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:—

Amendment of section 6 of Principal Act (Probation orders).

(3) The period of a probation order made against a person—

- (a) shall be such period not exceeding 3 years as the court specifies in the order;
- (b) shall, subject to section 7 (4), commence on such date as the court specifies in the order; and
- (c) may, subject to subsection (3A), be expressed to commence immediately after the expiration of the period of any other probation order made against that person.

(3A) Nothing in subsection (3) authorizes the making of a probation order against a person for such a period that, as a result of the making of the order, the total consecutive period of probation imposed on that person would exceed 3 years.

7—Section 7 (3) of the Principal Act is amended as follows:—

Amendment of section 7 of Principal Act (Conditional release of offenders).

- (a) by omitting “ before which he has been convicted ”;
- (b) by omitting “ work order ” and substituting “ community service order ”.

8—(1) Section 9 (4) of the Principal Act is amended as follows:—

Amendment of section 9 of Principal Act (Breach of probation order).

- (a) by inserting “, shall revoke that probation order, and ” before “ may forthwith—”;
- (b) by omitting “ offence; or ” from paragraph (a) (i) and substituting “ offence;”;
- (c) by omitting “ committal;” from paragraph (a) (ii) and substituting “ committal; or ”;
- (d) by inserting the following subparagraph after paragraph (a) (ii):—
 - (iii) impose a new probation order in the place of the revoked order;
- (e) by omitting “ offence; or ” from paragraph (b) (i) and substituting “ offence;”;
- (f) by omitting “ committal; and ” from paragraph (b) (ii) and substituting “ committal; or ”;

(g) by inserting the following subparagraph after paragraph (b) (ii):—

(iii) impose a new probation order in the place of the revoked order; and ”;

(b) by omitting paragraph (c) and substituting the following paragraph:—

(c) in the case of a probation order under section 7 (3)—

(i) sentence him to a fine of such amount, not exceeding \$100, or to such a term of imprisonment, not exceeding 6 months, or to both, as the court may think desirable in the circumstances; or

(ii) impose a new probation order in the place of the revoked order.

(2) Section 9 of the Principal Act is further amended by inserting the following subsection after subsection (4):—

(4A) For the purposes of subsection (4) (a) (iii), (b) (iii), and (c) (ii), a new probation order may contain—

(a) any or all of the provisions contained in the revoked order that it replaces; and

(b) such other provisions, as permitted pursuant to section 6 (2), as the court may think desirable in the circumstances.

Insertion in Principal Act of new section 9A.

Effect on probation order of imprisonment for unrelated offence.

9—The following section is inserted in Part III of the Principal Act after section 9:—

9A—Where a person against whom a probation order has been made is, during the period of that order, sentenced to imprisonment for an offence not related to the original offence, the operation of that order is, unless it is revoked under section 9, suspended until the date on which that person is released from prison.

Substitution of heading to Part IV of Principal Act.

10—The heading to Part IV of the Principal Act is omitted and the following heading is substituted:—

PART IV

COMMUNITY SERVICE ORDERS

11—(1) Section 11 (1) of the Principal Act is amended as follows:—

Amendment of section 11 of Principal Act (Power to make community service orders).

- (a) by inserting “ subject to this section and ” after “ jurisdiction may,”;
- (b) by omitting “ on so many days, not exceeding 25,” and substituting “ for so many hours, not exceeding 240,”.

(2) Section 11 of the Principal Act is further amended by inserting the following subsections after subsection (1):—

(1A) Where the Supreme Court or a court of summary jurisdiction makes a community service order in respect of 2 or more offences of which a person has been convicted, the Supreme Court or court of summary jurisdiction shall not order the person to do community service or other activity under those orders for a number of hours that, in the aggregate, exceeds 240.

(1B) Where, at the time when the Supreme Court or a court of summary jurisdiction makes a community service order in respect of a person, there is or are in force in respect of that person one or more other such orders, the Supreme Court or court of summary jurisdiction shall not order that person to do community service or other activity for a number of hours that would require him, after the making of the first-mentioned order, to do community service or other activity under that order for a number of hours that, aggregated with the hours of community service or other activity to be completed by him at that time under the previous order or orders, exceeds 240.

12—(1) Section 12 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Amendment of section 12 of Principal Act (Effect of community service orders).

(1) Where a community service order has been made against a person—

- (a) he shall report to a probation officer or a supervisor within one working day after the sentence was imposed; and
- (b) a probation officer or a supervisor shall notify him in writing that at a specified time on a specified day he is required to report to a supervisor at a specified place and of any special provision made for his transportation to that place.

(2) Section 12 (1A) of the Principal Act is amended as follows:—

- (a) by omitting “ a day ”, first occurring, and substituting “ a time ”;
- (b) by omitting “ a day on which a person, against whom a work order has been made,” and substituting “ a time at which a person against whom a community service order has been made ”.

(3) Section 12 (2) of the Principal Act is amended by omitting “ Subject to subsection (3), transportation ” and substituting “ Transportation ”.

(4) Section 12 of the Principal Act is further amended by omitting subsection (3).

(5) Section 12 (4) of the Principal Act is amended by omitting “(1), (2), and (3),” and substituting “(1) and (2),”.

Amendment of section 14 of Principal Act (Operation and enforcement of community service order).

13—(1) Section 14 (1) of the Principal Act is amended as follows:—

- (a) by inserting the following paragraph after paragraph (a):—
 - (ab) fails to report to a probation officer or supervisor as required under section 12 (1) (a);
- (b) by omitting from paragraph (e) “ section 15 (4);” and substituting “ section 15 (4) or (5);”.

(2) Section 14 (2) of the Principal Act is amended as follows:—

- (a) by inserting in paragraph (b) “ subject to section 11 (1B),” before “ increase ”;
- (b) by omitting “ more; or ” from paragraph (b) and substituting “ more;”;
- (c) by omitting “ months.” from paragraph (c) and substituting “ months; or ”;
- (d) by inserting the following paragraph after paragraph (c):—

(d) revoke that order and adjudge that the employee be fined or imprisoned for the offence for which it was made.

14—Section 15 of the Principal Act is amended as follows:—

- (a) by omitting subsections (1), (2), and (3);
- (b) by omitting from subsection (4) “ Secretary of the Law Department ” and substituting “ Chief Probation and Parole Officer ”;
- (c) by inserting the following subsection after subsection (4):—

(5) An employee shall not, during the currency of a community service order against him, leave Tasmania without obtaining the prior approval, in writing, of a probation officer or supervisor.

Amendment of section 15 of Principal Act (Place of abode, &c.).

15—Section 19 (2) (f) of the Principal Act is amended by omitting “ \$100 ” and substituting “ \$500 ”.

Amendment of section 19 of Principal Act (Regulations).

16—The provisions of the Principal Act specified in column 1 of Schedule 1 are amended by omitting the expressions specified in column 2, and substituting the expressions specified in column 3, opposite those provisions in that Schedule.

Consequential amendments of Principal Act.

17—(1) Section 6 (1) (d) of the *Jury Act 1899** is amended by omitting “ work order ” and substituting “ community service order ”.

Consequential amendments of *Jury Act 1899* and *Justices Act 1959*.

(2) Section 78 (5) (c) of the *Justices Act 1959*† is amended by omitting “ work order ” and substituting “ community service order ”.

18—Schedule 1 to the *Tasmanian State Service (Miscellaneous Amendments) Act 1984*‡ is amended by omitting “ Section 2 ” from item 1 of the amendments relating to the *Probation of Offenders Act 1973* and substituting “ Section 3 ”.

Amendment of *Tasmanian State Service (Miscellaneous Amendments) Act 1984*.

19—Where a work order made against a person is in force under the Principal Act immediately before the day fixed by proclamation under section 2 (3)—

Transitional provisions.

- (a) that order shall, on and after that day, be deemed to be a community service order made under that Act, as amended by this Act, against that person;

* 63 Vict. No. 32. For this Act, as amended to 1st September 1977, see the continuing Reprint of Statutes. Amended by No. 43 of 1982 and No. 29 of 1984.

† No. 77 of 1959. For this Act, as amended to 1st May 1982, see the continuing Reprint of Statutes. Amended by No. 33 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48, and 55 of 1984, and Nos. 9 and 51 of 1985.

‡ No. 29 of 1984. Amended by Nos. 4, 63, and 72 of 1985.

- (b) that order applies to and in relation to that person as if, instead of the number of days specified in the order as days ordered to be spent by him in doing things required under section 12 of that Act, it specified a number of hours ordered to be spent by him in doing those things, being a number of hours calculated in accordance with paragraph (c); and
- (c) the number of hours referred to in paragraph (b) shall be calculated by multiplying the number of days referred to in that paragraph by 8.

SCHEDULE 1

Section 16

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

COLUMN 1 Provision	COLUMN 2 Expression omitted	COLUMN 3 Expression substituted
section 11 (3)	(a) work order	community service order
section 11 (4)	(b) work	community service
section 12 (6)	work order	community service order
section 12 (7)	(a) subsection (1)	subsection (1) (b)
section 12 (8)	(b) work	community service
section 12 (9)	work (wherever occurring)	community service
section 12 (10)	work (twice occurring)	community service
section 13 (1)	work order	community service order
section 13 (2)	work order	community service order
section 13 (3)	(a) work order	community service order
section 13 (4)	(b) days	hours
section 13 (5)	work order	community service order
section 14 (1) (b)	work	community service
section 14 (1) (c)	(a) working	carrying out community service
section 14 (1) (d)	(b) work order	community service order
section 14 (2) (b)	(a) days	hours
section 14 (2) (c)	(b) 25	240
section 14 (3)	work order	community service order
section 14 (4) (a)	work order	community service order
section 14 (4) (b)	work order	community service order
section 16 (2) (b)	work	community service
section 19 (2) (a)	work orders;	community service orders;
section 19 (2) (d)	work orders;	community service orders;

