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1976, No. 15

An Act to provide for the establishment of Community Service Group

(18 November 1976)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same as follows:-

1. Short Title - This Act may be cited as the Criminal Justice Amendment Act 1976 and shall be read together with and

deemed part of the Criminal Justice Act 1967 (hereinafter referred to as the principal Act).

2. Commencement - This Act shall come into force on the island of Rarotonga on the 1st day of April 1977 and on the other islands of the Cook Islands on a date to be notified in the Cook Islands Gazette.

3. Interpretation - In this part of this Act, unless the context otherwise requires -

"Fine" includes any sum of money adjudged to be paid by a conviction, whether as a fine or for costs or otherwise;

"Controller" means the Controller of any Community Service Group appointed under section 5 of this Act;

"Community Service Group" means any Community Service Group established under Section 4 of this Act.

4. Establishment of Community Service Group - (1) The Minister may from time to time, by notice in the "Gazette", establish in any of the islands of the Cook Islands to which this Act applies a Community Service Group.

(2) Any such notice as aforesaid may be in like manner revoked at any time.

5. Controller and other officers of Community Service Group -

(1) Every Community Service Group shall from time to time be under the control of a Controller who shall be the Chief Probation Officer in service on the island or, if there be no Probation Officer, then such person whom the Minister by notice in the "Gazette" shall appoint.

(2) Each Probation Officer other than the Chief Probation Officer shall be deemed to be an officer of the Community Service Group and shall be designated for that purpose a Deputy Controller.

6. Controller charged with general administration of

Community Service Group - (1) Subject to the provisions of the principal Act (including this Act) and to the control of the Secretary for Justice, every Controller of a Community Service Group shall be charged with the general administration of the Group.

(2) Any Controller may, subject to any regulations made under this Part of this Act, and to directions given by the Secretary for Justice, delegate to any other officer all or any of his powers under this part of the Act, except the power to delegate under this section.

7. Protection of Officers in discharge of duties - The Controller and every Deputy Controller of a Community Service Group, while acting as such, shall have all the powers, authority, protection and privileges of a constable.

8. Community Service Order where offender guilty of

Offence punishable by imprisonment - (1) Subject to the provisions of section 13 of this Act, where any person who is not less than 13 years of age is found guilty of any offence punishable by imprisonment, the Court may, in its discretion, order him to serve in a Community Service Group (hereinafter referred to as a Community Service Order) for such term as it thinks fit, not exceeding in any case 12 months.

(2) Such order may be made irrespective of whether or not the Court convicts the offender of the offence.

(3) Where the Court orders any person to serve in a Community Service Group, it may also impose any fine or other

penalty authorised by law, but shall not impose any other sentence.

9. Community Service Order where offender liable to imprisonment for non-payment of fine - (1) In any case where, pursuant to section 20 of the Crimes Act 1969, an order may be made for the imprisonment by reason of non-payment of a fine imposed on him, of any person, a Judge may, if he thinks fit, subject to the provisions of section 13 of this Act, after considering the report which he would be required to consider if acting under the said section 20 of the Crimes Act 1969, and after taking into account any other fines owing by that person, order that person to serve in a Community Service Group for such term as it thinks fit, not exceeding in any case 12 months.

(2) A Community Service Order may be made under this section, notwithstanding that none of the offences in respect of which the fines were imposed was punishable by imprisonment.

(3) Where any person is ordered to serve in a Community Service Group under this section, those parts of the original sentences which dealt with the imposition of fines that have been taken into account under subsection (1) of this section shall be deemed to be cancelled in respect of any part of the fines unpaid when the order for service aforesaid was imposed.

(4) This section shall apply only in respect of fines imposed after the commencement of this section.

(5) Any person against whom an order under this section is made may within seven days of the service of the order on him apply to the Court for such order to be either suspended, varied or cancelled and upon receipt by the Court of such application, the order shall be suspended until final determination of the application has been made by the Court.

10. Probation may follow Community Service - (1) Where a Court acting under section 8 or section 9 of this Act orders any person to serve in a Community Service Group, it may, in its discretion further order as part of the order, that he shall be on probation for a period ending not later than one year after the expiry of his term of service and may:-

(a) Where it is acting under section 8 of this Act, impose all or any of the conditions which may be imposed under section 8 of the principal Act, and the provisions of subsections (2) and (3) of that section shall apply accordingly.

(b) Where it is acting under section 9 of this Act, impose all or any of the conditions which may be imposed under paragraphs (e) to (j) of subsection (1) of section 8 of the principal Act.

(2) Where a Court has ordered under subsection (1) of this section, that any person shall be on probation, the Court shall direct whether the period of probation shall commence on the date of the Community Service Order or on the expiry of such service.

(3) Where a Court has ordered, under subsection (1) of this section, that any person shall be on probation, the Registrar of the Court shall notify the Secretary for Justice.

11. Conditions of Probation - (1) Where a Court has ordered, under subsection (1) of section 10 of this Act, that any person shall be on probation, the conditions set out in section 8 of the principal Act, except paragraph (a) of that section, shall apply in addition to any special conditions imposed under subsection (1) of section 10 of this Act.

(2) In addition to the conditions specified in subsection (1) of this section, any person on probation under this Act shall be subject to the condition that he shall report to a probation officer within 48 hours after the commencement of his term of probation.

(3) The probation officer shall issue to every person on probation under this Act a probationary licence setting out the conditions which he is required to observe during the term of his probation.

12. Application of provision of the principal Act - Section 10 of the principal Act shall apply to every person on probation under this part of this Act with all necessary modifications as if he had been released on probation on the day on which the term of his probation began, including the following specific modification, namely, that the term of probation shall not extend beyond the end of one year from the date of the expiry of the term of community service.

13. Court to consider report of probation officer - (1) No Court shall sentence any person to serve in a Community Service Group until a report on his character and personal history and any other relevant circumstance has been made by a probation officer and has been considered by the Court.

(2) No Community Service Order shall be deemed to be invalid on the ground that a report by a probation officer was not made or was not considered by the Court.

(3) If any Court orders a person to serve in a Community service Group before a report from a probation officer has been made and considered under this section, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply to have the sentence reviewed.

14. Community Service Order - (1) Any person who is ordered to serve in a Community Service Group shall, during the term of service, be required to report to the Controller of the Group or to a specified Deputy Controller as the case may be, on a specified number of occasions each week, and on each such occasion to place himself in the custody of such Controller or Deputy Controller for a specified period.

(2) The Court imposing such sentence shall, by order:-

(a) Specify the number of occasions in each week on which the offender is required to report, or direct him to report on such number of occasions in each week as may from time to time be specified by the Controller of the Groups; and

(b) Specify the day and time at which he is required to report on the first such occasion after the order is made; and

(c) Specify the duration of each period of custody.

(3) It shall not be necessary for all periods of custody in any week to be of the same duration, but no such period shall be longer than 12 hours.

(4) The day and time at which a person ordered to serve in a Community Service Group is required to report to the Controller or Deputy Controller after the first shall be fixed by the Controller, who shall have regard to any general directions given by the Court in making the order or, subsequently, by any Judge to whom an application is made by the offender.

(5) In special circumstances the Controller may excuse any such person from reporting on any occasion or occasions, or on every occasion, in any week.

(6) The times at which a person ordered to serve in a Community Service Group is required to report for that purpose and the periods during which he is required to remain in custody, shall be such as to avoid interference, so far as practicable, with his attendance at any educational institution or his work or his genuine religious observances.

15. Legal custody of offender - (1) A person ordered to serve in a Community Service Group shall be in the legal custody of the Controller thereof throughout any period he is detained during the performance of such service or is travelling after reporting to the Controller or Deputy Controller as the case may be and any place where he has been directed by such person to work.

(2) Every such person shall be subject to the control, directions and supervision of the Controller or Deputy Controller who on each occasion on which he is serving, is in control of his service group.

16. Work to be performed by offenders - (1) Every period during which any person ordered to serve in a Community Service Group is in custody under this Act shall be spent in participating in such activities (physical or mental), attending such classes or groups, or undergoing such instruction as the Controller considers conducive to that person's reformation and training.

(2) Any such person may, at any time during any period in which he is required to be in custody under this Act, be employed in such suitable work, as the Controller directs.

(3) The type of work to which any such person be directed shall be work -

- (a) At any hospital or charitable or educational institution; or
- (b) At the home of any old, infirm, or handicapped person or at any institution for old, infirm or handicapped persons; or
- (c) On any land of which the Crown or any public body is the owner or lessee or occupier, or which is administered by the Crown or any Islands Council or Village Committee; or
- (d) On any foreshore involving the clearing of any litter or debris therefrom or the prevention of any erosion thereof.

Provided that no person shall be directed to any work if in doing that work he would take the place of any person who would otherwise be employed on that work as a regular employee of the institution aforesaid or, as the case may be, of the old, infirm, or handicapped person, or of the Crown or Island Council or Village Committee.

(4) Where any person is directed to work pursuant to this section -

- (a) He shall for the purpose of any Act or any rule of law be deemed to be a worker employed by the Crown; and
- (b) His weekly earnings shall be deemed to be an amount equivalent to his weekly earnings in any full-time employment in which he is engaged at that time or, if he has no full-time employment an amount which the Minister of Labour considers in all the circumstances of the case would be a fair amount.

(5) Any person serving in a Community Service Group pursuant to an order made under this section shall not be entitled to any remuneration in respect of that service.

17. Variation or Cancellation of Community Service Order -

(1) Any Community Service Order may at any time, on the application of the offender or of the Controller, or of any probation officer in respect of any probation ordered as part of that order, be varied or cancelled by the Court.

(2) An order may be varied or cancelled under this Section on the ground that there has been a change of circumstances since the order was made or, if the Court considers that a continuation of the order is no longer necessary in the interests of the community or the offender, the order may be cancelled on that ground.

18. Report on conduct of offender - Where any person has served in a Community Service Group and is later brought before a Court for any other offence, any probation officer or the Controller or any other officer of the Department of Justice may make a report in writing to the Court on the conduct of that person while he was in legal custody under that order, and, where the report is made by a person other than the probation officer, the provisions of section 5 of the principal Act shall apply with the necessary modifications.

19. Offences - (1) Every person ordered to serve in a Community Service Group commits an offence and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine of \$200.00 or to both who:-

- (a) Fails without reasonable excuse to report to the Controller of the Group or his specified Deputy Controller as required by the Court making the Community Service Order or in accordance with instructions given to him under subsection (4) of section 15 of this Act or to report to the place of work where directed by the Controller pursuant to subsection (2) of section 17 of this Act;
- (b) Fails without reasonable excuse to obey any rules governing the Community Service Group in which he is required to serve or any directions of the Controller or Deputy Controller, as the case may be, regarding the manner in which his time is to be spent while he is in the custody of such person;
- (c) Leaves without reasonable excuse any premises at which he is directed to perform work when he should be at those premises;
- (d) Is idle and careless at work, refuses to work, or neglects or wilfully mismanages his work, while he is in the custody of the Controller or Deputy Controller;
- (e) Uses or writes any abusive, insolent, insulting, threatening, profane, indecent or obscene words while he is in the custody of the Controller or Deputy Controller;
- (f) Behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while he is in the legal custody of the Controller or Deputy Controller.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding \$100.00 who, without lawful justification or excuse loiters about any place where persons serving in a Community Service Group are employed, and refuses or neglects to depart after being warned by any constable or the Controller or Deputy Controller supervising the employment.

20. Effect of subsequent convictions - If any person serving a term of Community Service is convicted of another offence and sentenced imprisonment for life or for a term of one year or more, the Community Service Order shall be deemed to be terminated; but, in the case of any other sentence imposed, the Court by which he is sentenced or otherwise dealt with may, unless any application pursuant to section 21 of this Act has been made to that or any other Court, in its discretion make an order terminating the Community Service Order. If the Court makes no such order and the person subject to the Community Service Order is sentenced to imprisonment for less than one year, the term of the Community Service Order shall continue to run while he is detained under the sentence of imprisonment, and on his release from imprisonment he shall continue to be subject to the Community Service Order for any unexpired residue of the term.

21. Application for substituted sentence - (1) If any person who is subject to a Community Service Order is convicted of any offence, committed after the order was made, which is punishable by imprisonment (whether or not the person subject to the order was sentenced to pay a fine), any probation officer may, unless the Community Service Order has been terminated under section 20 of this Act, apply to the Court, in accordance with this section and section 22 of this Act, to substitute another sentence for the Community Service Order.

(2) Before the hearing by the Court of any application under this section for the substitution of another sentence for a Community Service Order, the probation officer making the application shall cause notice of the application to be served on the person subject to the Community Service Order.

(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, if the person who is subject to a Community Service Order is charged with an offence against subsection (1) of section 19 of this Act, the probation officer, if he thinks fit, may before the hearing of the charge give notice to the person charged that if he is convicted of the offence charged, the Court will be asked to substitute another sentence for the Community Service Order. If the person so notified is convicted of the offence charged, the probation officer may, unless the Community Service Order has been terminated under section 20 of the Act, substitute another sentence for the Community Service Order, and it shall not be necessary for the probation officer to cause any subsequent notice of the application to be served on that person.

22. Court empowered to substitute sentence - (1) If the application made under section 21 is dealt with by a Judge other than the one who made the Community Service Order in respect of the offender, the Judge shall, before determining the application, make such inquiries as to the circumstances of the case as he considers reasonable, and may if he thinks fit, hear any evidence relevant to these circumstances.

(2) The Judge by whom the application is heard under this section may, if he thinks fit, having regard to the gravity of the offence in respect of which the order was made, the amount of any fine cancelled by the order, the extent (if any) to which the offender has virtually served the order (including the payment of any fine imposed with the order) and any other circumstance which he thinks relevant -

- (a) If the order was made pursuant to section 8 of this Act, substitute for it any sentence other than a Community Service Order which could

have been imposed on him at the time he was ordered to serve in a Community Service Group; or

- (b) If the order was made pursuant to section 9 of this Act, substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which he could have been committed to prison if he had been so dealt with under the Crimes Act 1969 instead of being ordered to serve in a Community Service Group.

(3) When under this section a sentence is substituted for a Community Service Order, the Community Service Order shall be deemed to be terminated.

23. Regulations - The High Commissioner may from time to time by Order in Executive Council make regulations for all or any of the following purposes:-

- (a) Prescribing the powers and duties of officers;
- (b) Ensuring the good management and government of Community Service Group;
- (c) Ensuring the discipline of persons serving in a Community Service Group; and prescribing or regulating classification, instruction and hours of work of such persons;
- (d) Generally providing for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration thereof;
- (e) Prescribing fines not exceeding \$100.00 for the breach of any regulation made under this Act.

This Act is administered in the Justice Department.