



I assent.

[L.S.]

K. K. T. MARA

President

[12 July 1994]

## **AN ACT**

**TO PROVIDE FOR THE PERFORMANCE OF COMMUNITY WORK  
BY PERSONS CONVICTED OF CERTAIN OFFENCES**

ENACTED by the Parliament of Fiji—

### **PART I—PRELIMINARY**

*Short title, commencement, etc.*

1.—(1) This Act may be cited as the Community Work Act, 1994.

(2) This Act shall come into operation on a date specified by the Minister by notice published in the Gazette.

*Interpretation*

2. In this Act, unless the context otherwise requires:—

"court" means any court exercising jurisdiction in criminal cases;

"employing authority", in relation to a person who is serving a sentence of community work, means the institution or organisation, or the instrument of the State, or the public body, on whose behalf the person is required to perform any work for the purposes of the sentence;

"Minister" means the Minister for Justice;

"Probation Officer" has the same meaning as it has in the Probation of Offenders Act 1978 (Cap. 22);

"Supervising Officer" means the probation officer who is for the time being supervising that person in accordance with section 7 of this Act;

"this Act" includes regulations made under this Act.

## PART II—SENTENCING

*Sentence of community work*

3.—(1) Where a person is convicted of an offence punishable by imprisonment, a court may, with the consent of the offender, sentence the offender to community work in accordance with Sections 4 and 5 of this Act, for the prescribed number of hours.

(2) For the purpose of subsection (1) the prescribed number of hours means, where the offence is punishable by a term of imprisonment—

(a) not exceeding 6 months—not less than 20 hours, nor more than 50 hours; or

(b) exceeding 6 months but not exceeding 12 months—not less than 20 hours, nor more than 100 hours; or

(c) exceeding 12 months but not exceeding 2 years—not less than 20 hours, nor more than 200 hours; or

(d) exceeding 2 years—not less than 20 hours, nor more than 400 hours.

(3) In determining the number of hours of community work to be performed the court shall have regard to whether or not the offender would otherwise have been sentenced to imprisonment.

*Court may impose community work only with consent, etc.*

4. A court shall not sentence a person to perform community work unless—

(a) that person consents; and

(b) the court is satisfied that—

- (i) the person is a suitable person to perform community work; and
- (ii) suitable work is available for that person to perform for the purpose of the sentence; and
- (iii) there exist satisfactory arrangements for the supervision of that person's performance of the work.

*Court to explain community work to convicted person*

5. Where a court proposes to sentence a person to perform community work it shall, before, or at time of sentencing explain or cause to be explained to that person in language likely to be readily understood by him—

(a) the purpose and effect of the proposed sentence; and

(b) the consequences that may follow if he fails to comply with—

(i) the proposed sentence; or

(ii) a requirement of this Act in respect of the proposed sentence; and

(c) that the proposed sentence may be varied or cancelled.

*Concurrent and cumulative sentences*

6.—(1) Where a court—

(a) imposes a sentence of community work on an offender who is already subject to such a sentence; or

(b) imposes such a sentence in respect of each of 2 or more offences,

the sentences shall be concurrent unless the court directs that they are to be cumulative.

(2) For the purpose of subsection (1) of this Section, where an offender who is subject to 2 or more concurrent sentences of community work performs any authorised work in accordance with and for the purposes of any of those sentences, the offender shall be deemed to have performed, the work in accordance with and for the purposes of each of those sentences.

(3) No sentence of community work may be imposed on an offender if that sentence, together with any other sentence of community work imposed on the offender at the same time or any other time would have the result that the number of hours to be or remaining to be performed, at any time, concurrently or cumulatively, under the sentences would exceed 400 hours.

(4) A sentence of community work shall not be imposed concurrently with any other sentence other than a fine, or an order for disqualification from driving a motor vehicle, compensation, restitution, forfeiture or costs.

- (5) A sentence of community work shall not be cumulative on a sentence of any other kind.
- (6) No sentence of any other kind shall be cumulative on a sentence of community work.
- (7) Where an offender who is before a court for sentence is already detained under a sentence of imprisonment imposed on an earlier occasion, the court shall not impose on that offender any sentence of community work.

### PART III—SUPERVISING OFFICER

#### *Supervising Officer*

- 7.—(1) An offender who is subject to a sentence of community work shall, during the currency of the sentence, be under the supervision of a probation officer in whose district the offender resides for the time being.
- (2) Within 72 hours after a sentence of community work is imposed, the offender shall report to the Supervising Officer, and thereafter, as and when required to do so by the Supervising Officer.

#### *Duties of Supervising Officer*

8. It shall be the duty of every supervising officer—
- (a) to supervise all persons placed under his supervision pursuant to a sentence of community work under Section 3 of this Act, to ensure that the conditions of the sentence are complied with;
- (b) to arrange and administer the sentence of community work referred to him for such supervision, and to ensure that the sentence is carried out;
- (c) to provide to a court all such reports and information as the court may require pursuant to any of the provisions of this Act;
- (d) to perform such other duties as may be prescribed by or under this Act.

### PART IV—PERFORMANCE OF COMMUNITY WORK

#### *Community work to be performed by offenders*

9. As soon as practicable after a sentence of community work is imposed, the Supervising Officer shall arrange for the offender to perform suitable authorised work in accordance with Sections 10, 13 and 15 of this Act, for the number of hours in the aggregate specified by the court.

#### *When work to be performed*

- 10.—(1) The period during which work is to be performed under a sentence of community work shall commence on the day on which the sentence is imposed.
- (2) Except in a case to which subsection (3) of this Section applies and subject to subsection (2) of Section 13 of this Act, the work required to be performed for the purposes of a sentence of community work shall be performed within a period of 12 months.
- (3) Where a sentence of community work (in this subsection referred to as the subsequent sentence) is imposed on an offender in respect of whom such a sentence has been imposed at any time within the immediately preceding period of 12 months (the earliest such sentence being referred to in this subsection as the first sentence), the work required to be performed for the purposes of the subsequent sentence shall be performed during the period of 12 months commencing with the date of the first sentence, or within such further period not exceeding 6 months as the court imposing the subsequent sentence may order.
- (4) Subject to subsections (2) and (3) of this Section, the days on which and the times at which the offender performs the work shall be fixed by agreement between the offender and the employing authority, with the approval of the Supervising Officer.
- (5) For the purpose of reaching an agreement under subsection (4) of this Section consideration shall be given, so far as is practicable, to avoiding -

- (a) a conflict with the offender's religious beliefs (if any); and
- (b) interference with the times (if any) at which the offender normally works or attends a school or other educational establishment.

#### *Obligations of offender subject to sentence of community work*

- 11.—(1) An offender subject to a sentence of community work shall in addition to complying with the requirements of this Act in respect of a sentence of community work—
- (a) perform, for the number of hours specified in the order, such community work as the Supervising Officer directs at such times as the Supervising Officer directs; and
- (b) perform that work in a satisfactory manner; and
- (c) in respect of that work, comply with any reasonable direction of the Supervising Officer; and
- (d) inform the Supervising Officer of any change in his place of residence.

#### *Order to be drawn up and copy given to offender*

- 12.—(1) Where a court imposes a sentence of community work on an offender, it shall cause the particulars of the sentence to be drawn up in the form of an order, and, wherever practicable, a copy of the order shall be given to the offender before he leaves the court.

(2) For the purposes of subsection (1) of this Section, a court may direct that the offender be detained in the custody of the court for such time, not exceeding 3 hours, as may be necessary to enable the order to be drawn up and a copy given to the offender.

(3) Where it is not practicable to give a copy of the order to the offender before he leaves the court, a copy shall be given by the Supervising Officer to the offender, in person, as soon as practicable thereafter.

*Variation or cancellation of sentence of community work*

13.—(1) A sentence of community work may at any time, on the application of the offender or of the Supervising Officer, made in accordance with Section 19 of this Act, be varied by reducing the number of hours of work to be performed for the purposes of the sentence, or cancelled, by a court on any of the following grounds:

- (a) that there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence;
- (b) that a continuation of the sentence is no longer necessary in the interests of the community or the offender;
- (c) that no, or no more, suitable authorised work is available to be performed by the offender for the purposes of the sentence.

(2) Without limiting subsection (1) of this Section, a court may, on the application of the offender or of the Supervising Officer made in accordance with section 18 of this Act, suspend for such time as it thinks fit the running of the period during which the work is to be performed for the purposes of a sentence of community work, if it is satisfied—

- (a) that, in accordance with subsection (4) of Section 10 of this Act, the offender has arranged to perform the work or any part of it during a specified period; and
- (b) because of incapacity or any humanitarian or other reasons considered sufficient by the court, it will be impossible for the offender to perform the work during that period or that it would be unreasonable to require the offender to do so.

(3) Where the Supervising Officer applies for the cancellation of a sentence of community work on the ground set out in paragraph (c) of subsection (1) of this Section, the Supervising Officer may also, in that application, apply to the court to substitute another sentence in place of the sentence of community work; and in such a case the court may exercise any of the powers conferred on it by subsection (1) of Section 20 of this Act as if the application for a substituted sentence were an application for review of sentence made under Section 18 of this Act.

*Offences relating to breach of sentence of community work*

14. An offender who is sentenced to community work commits an offence and is liable to imprisonment not exceeding 3 months or a fine not exceeding \$500 who—

- (a) fails without reasonable excuse to report to the Supervising Officer in accordance with subsection (2) of Section 7 of this Act; or
- (b) fails without reasonable excuse -
  - (i) to comply with any of the requirements of Section 11 of this Act; or
  - (ii) to comply with the terms of any agreement entered into for the purposes of subsection (4) of Section 10 of this Act; or
- (c) fails without reasonable excuse to complete the required number of hours of work within the period prescribed by or under subsections (2) and (3) of Section 10 of this Act; or
- (d) accepts remuneration whether by way of gift or otherwise, in respect of any work that the offender is required to perform for the purposes of the sentence.

*Authorised work for person sentenced to community work*

15.—(1) Subject to subsection (2) of this Section, the types of work that an offender may be required to perform for the purposes of a sentence of community work shall be work—

- (a) at or for any hospital, or at or for any charitable, educational, cultural, or recreational institution or organisation; or
- (b) at or for any other institution or organisation for old, infirm, or handicapped persons; or
- (c) at or for any Provincial, Tikina, or Village Council; or
- (d) on any land on which the State or any public body is the owner or lessee or occupier, or any land that is administered by the State or any public body.

(2) No offender shall be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person who would otherwise be employed in doing that work in the ordinary course of that person's employment.

*Offenders not entitled to remuneration*

16. An offender shall not be entitled to any remuneration, nor shall an offender accept any remuneration, whether by way of gift or otherwise, in respect of any work done for the purposes of a sentence of community work.

*Effect of subsequent sentences*

17. Where an offender who is subject to a sentence of community work is subsequently sentenced for another offence to imprisonment, the sentence of community work shall be deemed to be cancelled unless the court otherwise orders.

*Application to review sentence*

18.—(1) Where—

- (a) an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or
- (b) a probation officer believes on reasonable grounds that an offender who is subject to any such sentence has failed or is unable to comply with any condition or requirement of the sentence; or
- (c) an offender who is subject to a sentence of community work is convicted of an offence against paragraph (b) or paragraph (c) of Section 14 of this Act,—  
any probation officer may, unless the sentence is cancelled or is deemed to be cancelled in accordance with any of the provisions of this Act, apply to a court in accordance with Section 19 of this Act for a review of the sentence.

(2) An application under this Section may be dealt with notwithstanding that, at the date of the hearing, the sentence has expired; but if the sentence is cancelled or is deemed to be cancelled before the date of the hearing, the application shall lapse.

(3) For the purposes of this Section, an offender who is convicted of an offence against paragraph (c) of Section 14 of this Act shall be deemed to be still subject to the sentence of community work.

## PART V—JURISDICTION AND PROCEDURE ETC.

*Jurisdiction and procedure*

19.—(1) Every application under Section 13 or Section 18 of this Act shall be made—

- (a) to the High Court, if the sentence was passed—
  - (i) by the Court of Appeal on appeal from the High Court; or
  - (ii) by the High Court otherwise than on appeal from a Magistrates' Court;  
or
- (b) a Magistrates' Court presided over by any Magistrate, in any other case.

(2) A copy of every such application shall, either before or as soon as practicable after the application is lodged in the office of the court, be served—

- (a) on the offender, where he or she is not the applicant; or
- (b) where the offender is the applicant on the Supervising Officer, in the case of an application under Section 13 of this Act.

(3) Where an application under Section 18 of this Act has been lodged in a court, a probation officer or a member of the Police may, for the purpose of having the offender brought before the court dealing with the application, apply to a court for the issue of a warrant to arrest the offender, but no such warrant shall be executed otherwise than by a member of the Police.

(4) Where an offender is arrested pursuant to a warrant issued under subsection (3) of this Section, the provisions of Part IV of the Criminal Procedure Code (Cap. 21), so far as they are applicable and with any necessary modifications, shall apply as if the application were an information.

*Powers of court*

20.—(1) On application under Section 18 of this Act, a court, if it is satisfied that the ground on which the application is based under subsection (2) of that Section has been established, and, having regard to the gravity of the offence for which the sentence was imposed, the extent (if any) to which the offender has served that sentence, the amount of any fine or compensation imposed with the sentence, and any other circumstances that the court considers relevant, may—

- (a) vary the sentence by reducing the number of hours of work to be performed for the purposes of the sentence, or suspend for such time as it thinks fit the running of the period during which authorised work is to be performed for the purposes of the sentence; or
- (b) cancel the sentence; or
- (c) substitute for the sentence of community work any other sentence that could be imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(2) If the application is dealt with by a Judge or Magistrate other than the one who imposed the sentence, the Judge or Magistrate shall, before determining the application, make such inquiries as to the circumstances of the case as the Judge or Magistrate considers reasonable, and may hear any evidence relevant to those circumstances.

*Regulations*

21. The Minister may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular with respect to—
  - (i) prescribing records to be kept and reports to be made to a court by a Supervising Officer in respect of an offender;
  - (ii) prescribing requirements to be complied with by an offender;
  - (iii) regulating the conduct of Supervising Officers and offenders.

Passed by the House of Representatives this twentieth day of June, in the year of our Lord one thousand, nine hundred and ninety-four.

Passed by the Senate this seventh day of July, in the year of our Lord one thousand, nine hundred and ninety-four.