



New South Wales

Fines Amendment (Work and Development Orders) Act 2011 No 33

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Fines Amendment (Work and Development Orders) Act 2011 No 33

Act No 33, 2011

An Act to amend the *Fines Act 1996* to make further provision with respect to work and development orders. [Assented to 13 September 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fines Amendment (Work and Development Orders) Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fines Act 1996 No 99

[1] Section 99A Definitions

Insert “for the time being” after “person or body approved” in the definition of *approved organisation*.

[2] Section 99A, definition of “approved person”

Insert “and enrolled for the time being in accordance with the guidelines” after “that treatment” in paragraph (b) of the definition.

[3] Section 99A, definition of “guidelines”

Insert in alphabetical order:

guidelines means guidelines issued under section 99I.

[4] Section 99B Making an order

Omit section 99B (1) (b). Insert instead:

(b) the person:

- (i) has a mental illness, or
- (ii) has an intellectual disability or cognitive impairment, or
- (iii) is homeless, or
- (iv) is experiencing acute economic hardship, or
- (v) has a serious addiction to drugs, alcohol or volatile substances, and

[5] Section 99B (2) (c)

Omit “(including supporting evidence)”.

[6] Section 99B (2A)

Insert after section 99B (2):

- (2A) If the application for the order is in relation to a person who has a serious addiction to drugs, alcohol or volatile substances but does not satisfy any of the other criteria referred to in subsection (1) (b), the only activities that the person may be required to carry out under the order are counselling and drug or alcohol treatment.

[7] Section 99BA

Insert after section 99B:

99BA Assessments of eligibility for orders and keeping of records

- (1) An application for a work and development order may include an assessment by the approved person or persons supporting the application as to whether the person for whom the order is sought meets any of the criteria specified in section 99B (1) (b).
- (2) If such an assessment is included in the application, the State Debt Recovery Office is to rely on that assessment when deciding whether to make the work and development order unless it has information that gives it reason to believe that it should not rely on the assessment.
- (3) If an approved person supports an application for a work and development order or includes in such an application an assessment of eligibility for the order, the approved person is to keep records of the supporting evidence for the application or the assessment of eligibility in accordance with the guidelines.
- (4) The State Debt Recovery Office may, at any time, require the approved person or persons who supported the application or made the assessment to provide all or specified types of that supporting evidence.
- (5) Despite section 99I, the State Debt Recovery Office may waive a requirement that an application for a work and development order or an assessment of eligibility for a work and development order be supported by a particular type of evidence if it considers the circumstances of the case warrant it.

[8] Section 99C Variation or revocation of order

Insert at the end of section 99C (1) (b):

, or

- (c) if it is of the opinion that information provided in, or in connection with, the application for the order is false or misleading in a material particular, or
- (d) if it is of the opinion that information provided in, or in connection with, a report provided to the State Debt Recovery Office by an approved person who is supervising the person subject to the order is false or misleading in a material particular, or

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- (e) if it is of the opinion that the person subject to the order does not meet, or no longer meets, any of the criteria referred to in section 99B (1) (b) specified in the application for the order as a ground for the making of the order, or
 - (f) if it is of the opinion that an approved person who is supervising compliance with the order is unable to continue with that supervision or is in breach of any of the approved person's obligations under this Subdivision, or
 - (g) if it is of the opinion that the person who is supervising compliance with the order is no longer an approved person.

[9] Section 99I

Omit the section. Insert instead:

99I Work and development guidelines

- (1) The Minister administering the *Crimes (Sentencing Procedure) Act 1999* may issue guidelines (not inconsistent with this Act or the regulations under this Act) for or with respect to work and development orders.
- (2) Without limiting subsection (1), the guidelines may make provision for or with respect to the following matters:
 - (a) determining the eligibility of a person for a work and development order,
 - (b) the supporting evidence required in relation to any aspect of eligibility for a work and development order,
 - (c) the keeping of any such supporting evidence and any other documentation in relation to the carrying out of activities under work and development orders,
 - (d) the value of the activities that are to be undertaken under a work and development order for the purposes of satisfying the fine to which the order relates,
 - (e) the manner of making an application for a work and development order,
 - (f) the requirements for obtaining approval as an approved organisation,
 - (g) the enrolment of health practitioners as approved persons,
 - (h) the revocation of the approval of approved organisations or enrolment of health practitioners as approved persons,

- (i) the conditions to be complied with and the requirements to be met by approved persons, including (but not limited to) requirements for the auditing of documentation required to be kept by approved persons and for the furnishing of reports on the carrying out of activities under work and development orders.
- (3) The State Debt Recovery Office, approved persons and other persons exercising functions under this Subdivision are required to comply with the guidelines. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.
- (4) Nothing in subsection (3) prevents action being taken under this Subdivision to revoke a work and development order or the approval of an approved organisation or enrolment of a health practitioner as an approved person.
- (5) The guidelines are to be prepared in consultation with the Minister administering Part 8 (State Debt Recovery Office).
- (6) The guidelines:
 - (a) may be amended or replaced, and
 - (b) are to be published on the NSW legislation website.

[10] Section 99J Regulations

Omit section 99J (2).

[11] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Fines Amendment (Work and Development Orders) Act 2011

[Agreement in principle speech made in Legislative Assembly on 3 August 2011
Second reading speech made in Legislative Council on 6 September 2011]

BY AUTHORITY