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# Work and Development Order Guidelines 2017

## *Fines Act 1996*(NSW)

These guidelines are issued by the Attorney General, in consultation with the Minister for Finance, Services and Property, under section 99I of the *Fines Act 1996*. The Office of State Revenue (**OSR**), approved sponsors, and other people with functions under the Work and Development Order scheme must comply with these guidelines.

In the event of any inconsistency between these guidelines and the *Fines Act 1996*, the *Fines Act 1996* prevails.

## Essential Summary

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The Work and Development Order (WDO) scheme is jointly delivered by the Department of Justice, Office of State Revenue (OSR), Legal Aid NSW and the Aboriginal Legal Service NSW/ACT.

The WDO scheme enables eligible people who are experiencing significant hardship to reduce their fine debt through voluntary participation in unpaid work, courses, treatment, programs and other activities. The scheme was introduced alongside a number of other reform measures under the *Fines Further Amendment Act 2008* (NSW). Together, the purpose of the changes was to improve the difficulties that fines present to the most disadvantaged people in the community.

Participation in the WDO scheme requires the support of an approved WDO sponsor. Not-for-profit organisations, government agencies and health practitioners can apply to the Department of Justice to become a WDO sponsor. Applications from for profit organisations will also be considered on a case by case basis. Conditions of approval apply.

If a sponsor elects to support a WDO application they are responsible for determining whether their client is eligible to participate in the scheme, implementing the approved WDO and meeting on-going monitoring and reporting requirements.

WDO sponsors are responsible for:

- assessing client eligibility to undertake a WDO,
- obtaining and keeping proof of client eligibility,
- submitting client WDO applications and monthly activity reports to OSR via the self-service portal,
- maintaining records of activities and client attendance,

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- identifying and managing any conflicts of interest,
  - providing information for program audit activities on request.

Activities undertaken for a WDO are agreed between the individual client and their sponsor. WDO activities can be provided directly by the approved WDO sponsor or by an appropriate third party provider on referral from the sponsor. Court-ordered activities cannot be included in a WDO.

For further information on WDOs and these guidelines, contact the OSR on [wdosdro@osr.nsw.gov.au](mailto:wdosdro@osr.nsw.gov.au) or visit the OSR website <http://www.sdrc.nsw.gov.au/>.

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# 1 Guidelines purpose

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The purpose of these guidelines is to assist Office of State Revenue (**OSR**), approved sponsors and the public to understand and apply the provisions of the *Fines Act 1996* that deal with Work and Development Orders (**WDOs**).

OSR, approved sponsors and other people with functions under the WDO scheme must comply with these guidelines.

The guidelines are intended to ensure consistency in decision-making, but also to provide sufficient flexibility to enable each WDO application to be considered on its merits.

## 2 Definitions

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Unless otherwise specified, the terms used in these guidelines have the same meaning as in the *Fines Act 1996*.

**Fine** includes both a court fine and a penalty notice.

**Fine debt** includes debt arising from both court fines and penalty notices.

**Sponsor** includes organisations and health practitioners approved to support and supervise client WDOs.

## 3 What is a Work and Development Order?

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A WDO is an order made by OSR that requires a person to do any one or more of the following in order to satisfy all or part of their fine debt:

- undertake unpaid work for, or on behalf of, an approved sponsor,
- undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,
- undertake an educational, vocational or life skills course,
- undergo financial or other counselling,
- undergo drug or alcohol treatment, or
- undertake a mentoring program (this option is only available if the person is under 25 years of age).<sup>1</sup>

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<sup>1</sup> *Fines Act 1996*, s 99A.

## 4 Who is eligible for a WDO?

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A person is eligible for a WDO if he or she:

- has a mental illness,
- has an intellectual disability or cognitive impairment,
- is homeless,
- is experiencing acute economic hardship, or
- has a serious addiction to drugs, alcohol or volatile substances.<sup>2</sup>

Guidance on the meanings of these terms, and proof of eligibility requirements, are set out below in clause 5.

Both children and adults can apply for WDOs. People living inter-state (with NSW fine debt) can also apply for WDOs.

A person on a permanent or temporary Australian visa (with NSW fine debt) can apply for a WDO. However, visa holders and their advocates should note that participation in certain WDO activities may breach visa conditions, and are encouraged to seek further advice from the Department of Immigration and Border Protection on a case by case basis.

It is not necessary to prove that the person's disability, impairment, illness, homelessness or hardship contributed to the person incurring the fine or penalty notice. However, the approved sponsor must be satisfied and may be asked to verify that the person:

- is unable to pay the fine, or because of the person's condition or circumstances, it is more appropriate for the person to undertake the work or activities proposed rather than pay the fine and
- that the person does not possess substantial assets other than the home they live in.

OSR can only make a WDO in respect of a person if:

- an enforcement order has been made against the person in respect of the fine. (A person can voluntarily apply for an enforcement order for the purposes of a WDO.<sup>3</sup> No enforcement costs apply in these circumstances),<sup>4</sup>
- a community service order is not in force against the person in respect of the fine,
- the person's application is supported by an approved sponsor.

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<sup>2</sup> *Fines Act 1996*, s 99B(1)(b).

<sup>3</sup> *Fines Act 1996*, s 14(1B)(a) and 42 (1AA) (a)

<sup>4</sup> *Fines Regulation 2015*, Clause 6(2)

## 5 Making an application for a WDO

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### 5.1 General

Sponsors are not obliged to support a client application for a WDO, however if an application is supported the sponsor is responsible for determining whether that person is eligible to participate in the WDO scheme. Sponsors must keep documentary proof, in accordance with these guidelines, to support their assessment of a person's eligibility (see 13.1). **This documentation (as well as other WDO records) may be audited for the purposes of ensuring compliance with the requirements of the WDO scheme (see 14).**

The person providing the supporting documentation (proof of eligibility) set out below can be the sponsor supporting the WDO application, provided they have the relevant expertise.

Once the sponsor has assessed that a person is eligible, an application for a WDO may be submitted to OSR. Applications are submitted to OSR via the online WDO self-service portal, unless the application is made under paragraph 5.5.4 of these Guidelines (Acute Economic Hardship – exceptions).

The following details may be required for the application:

- applicant's date of birth and gender,
- address and contact details of the applicant (this may be care of the sponsor organisation or health practitioner),
- driver licence number and state of issue,
- Centrelink Reference Number if the person receives a Centrelink benefit.

The WDO application must set out:

- the grounds for requesting the order, and
- the proposed activities to be carried out under the order.

The sponsor must also retain:

- proof of identity or other documentation establishing the identity of the applicant (proof of identification may include a copy of the applicant's drivers licence, birth certificate or other photographic identification),
- evidence that a 'Working with Children check' has been undertaken for (i) the applicant, if the proposed activities involve child-related activities or (ii) person(s) responsible for the supervision of proposed activities under the WDO, if the applicant is under 18 years of age,
- proof of eligibility in accordance with these guidelines.

A WDO should clearly reflect an applicant's capabilities and personal circumstances. It should not be too onerous for the applicant, having regard to their age and other personal circumstances. A person may apply for a time to pay arrangement (payment plan) in conjunction with a WDO.

Where a sponsor organisation is supporting the application, the application must include the name, contact details and endorsement of the person responsible for supervising the proposed activities under the WDO.

Any person who makes a false or misleading statement in a WDO application or report may be liable to criminal prosecution under the *Crimes Act 1900* or other action determined by OSR which may include revocation of a WDO and/or recommencement of enforcement action.

## **5.2 Mental illness – definition and proof**

### **Definition**

Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions,
- (b) hallucinations,
- (c) serious disorder of thought form,
- (d) a severe disturbance of mood,
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in points (a)-(d).<sup>5</sup>

Some common types of mental illness include schizophrenia, psychosis, bipolar disorder and serious depression or anxiety.

The WDO scheme also recognises personality and other addictive disorders as a mental illness as per the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition<sup>6</sup>. This may include gambling disorders, schizotypal and antisocial personality disorders.

### **Proof**

Where eligibility for a WDO is claimed on the ground of mental illness, the sponsor must keep a letter or other documentation from:

- the applicant's treating doctor, psychiatrist, registered psychologist, or mental health nurse, or

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<sup>5</sup> This definition is taken from s 4 of the *Mental Health Act 2007* (NSW).

<sup>6</sup> Diagnostic and Statistical Manual of Mental Disorders 5<sup>th</sup> Edition 2013 (American Psychiatric Association)

- a government agency or non-government organisation with professionals qualified to make mental health assessments, including, but not limited to: Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, and the Department of Family and Community Services, or
- Centrelink, if the applicant is in receipt of a full or partial disability pension (such as a Job Capacity Assessment or other report).

The supporting documentation should be no older than 6 months **prior to** the date of the application, and should explain:

- the diagnosis, including the nature, severity and effects of the illness/ condition, and
- how long the applicant has had the illness/condition.

Examples of this documentation include case notes, medical certificates, evidence of financial distress, or a letter of support from the person or agency that supplied documents confirming proof of eligibility.

### **5.3 Intellectual disability and cognitive impairment – definitions and proof**

#### **Definition**

A person has an intellectual disability where that disability:

- (a) is attributable to an intellectual impairment, and
- (b) is permanent or likely to be permanent, and
- (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.<sup>7</sup>

Cognitive impairment incorporates a wider range of disabilities than intellectual disability and includes a disability which:

- (a) is attributable to impaired brain functioning that can be associated with many diagnoses that are present at birth or acquired throughout a person's life span, and
- (b) is permanent or likely to be permanent, and
- (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.

Examples of cognitive impairment include a developmental disorder (such as autistic spectrum disorder and cerebral palsy), neurological disorder, dementia, brain injury (including from trauma or as a result of substance abuse), or Alzheimer's disease.<sup>8</sup>

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<sup>7</sup> This definition is adapted from the definition of the intellectual disability target group in section 24 of the *Disability Inclusion Act 2014* (NSW).

<sup>8</sup> This list of examples is adapted from the definition of cognitive impairment in s61H(1A) of the *Crimes Act 1900* (NSW).

## **Proof**

Where eligibility for a WDO is claimed on the grounds of intellectual disability or cognitive impairment, the sponsor must keep one of the following:

- if the applicant is in receipt of a full or partial disability pension, a Job Capacity Assessment or other report from Centrelink describing the applicant's disability or impairment, or
- if the applicant has been declared eligible for the services of Ageing, Disability and Home Care (ADHC), proof of this declaration, or
- a letter or other documentation from any of the following clearly describing the person's disability or impairment:
  - the applicant's general practitioner,
  - the applicant's school teacher or Principal, or an officer in the Department of Education and Communities,
  - a government agency or non-government organisation with experience working with people with intellectual disabilities or cognitive impairments, including, but not limited to Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, the Department of Family and Community Services, or a relevant legal service or a Disability Employment Services provider.

Examples of this documentation include case notes, medical certificates, evidence of financial distress, or a letter of support from the person or agency that supplied documents confirming proof of eligibility.

## **5.4 Homelessness – definition and proof**

### **Definition**

A person is considered homeless if they are:

- a) without conventional accommodation – for instance, sleeping in parks or on the street, squatting, living in cars or in improvised dwellings, or
- b) moving from one form of temporary accommodation to another – for example, refuges, emergency hostel accommodation, or temporary space in the homes of family and friends, or
- c) living in temporary accommodation due to domestic violence, unsafe living conditions or inability to afford other housing, or
- d) living in a caravan park due to their inability to access other accommodation, or

- e) living in boarding houses on a medium to long-term basis.<sup>9</sup>

### **Proof**

Where eligibility for a WDO is claimed on the ground of homelessness, the sponsor must keep a letter or other documentation from:

- the applicant's lawyer, specialist service provider or case worker, or
- a government agency or non-government organisation with experience working with people experiencing homelessness, including but not limited to Juvenile Justice, Corrective Services NSW, NSW Trustee and Guardian, the Department of Family and Community Services or youth services.

clearly explaining:

- the applicant's current living arrangements (where possible),
- the type of homelessness the applicant is experiencing (with reference to the above definition), and
- how long the applicant has been homeless.

Any supporting documentation should be dated within 3 months prior to the date of the application.

## **5.5 Acute economic hardship – definition and proof**

### **Definition**

#### **5.5.1 Clients on Centrelink benefits**

A person will be deemed to be in acute economic hardship if he or she is in receipt of any of the following benefits:

- |                              |   |
|------------------------------|---|
| ▪ Newstart Allowance         | ▪ Sickness Allowance                        |
| ▪ Youth Allowance            | ▪ Age Pension; or                           |
| ▪ Parenting Payment          | ▪ Department of Veterans' Affairs benefits. |
| ▪ Disability Support Pension | ▪ ABSTUDY                                   |
| ▪ Carer Payment              |   |
| ▪ AUSTUDY                    |   |

#### **5.5.2 Clients under the age of 18**

A person under the age of 18 is generally taken to be in acute economic hardship. However, the approved sponsor must be satisfied that the person is unable to pay the fine and that the person does not possess substantial assets.

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<sup>9</sup> This is based on the Chamberlain and McKenzie definition of homelessness, which is used by the Australian Bureau of Statistics in their Information paper – A Statistical Definition of Homelessness, 2012.

### 5.5.3 Other clients

If a person is not eligible under 5.5.1 or 5.5.2, he or she will be taken to be in acute economic hardship if he or she is a member of a household that has a weekly/monthly household income below the following thresholds (before tax). Please note, if a person is experiencing domestic or family violence involving financial abuse, any income that cannot be accessed because of that abuse should not be counted for the purpose of determining household income.

Household type	\$ per month	\$ per week
Single	\$2,359	\$543
Single + 1 child	\$2,831	\$652
Single + 2 children	\$3,146	\$724
Single + 3 children	\$3,460	\$796
Single + 4 children	\$3,775	\$869
Couple	\$2,989	\$688
Couple + 1 child	\$3,460	\$796
Couple + 2 children	\$3,775	\$869
Couple + 3 children	\$4,090	\$941
Couple + 4 children	\$4,404	\$1,014
Each additional child	\$315	\$72
Each additional adult	\$629	\$145

Income includes, but is not limited to, wages, pensions or benefits, allowances, interest on investments, or financial support from an associate (e.g. support provided by a parent or family member overseas).

If a person pays child support, the amount of child support paid each week or month should be deducted from his or her income (before tax). The person's income after child support has been deducted should then be compared with the relevant threshold for the household type in which he or she lives.

If an applicant is living with a person with whom he or she does not have a financial relationship (such as in shared accommodation, including a hostel, boarding house, student accommodation or a refuge), that person should not be counted as a member of the household for the purpose of determining household income.

### 5.5.4 Exceptions

If a person is a member of a household with income above these thresholds, but their sponsor is of the view that the person is nonetheless in acute economic hardship (for instance, because the person has significant and unavoidable expenses such as large medical bills, or because the person does not otherwise have access to the household income), an application may be made to OSR to confirm eligibility outside the usual criteria.

## **Proof**

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.1, the sponsor must keep documentary evidence, dated within 4 weeks from the date of the application, that the person is in receipt of one of the listed Centrelink or Department of Veterans' Affairs benefits.

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.2, the sponsor must keep documentary evidence confirming the person's date of birth, such as a copy of the person's birth certificate, licence or identification card.

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.3, the sponsor must keep documentary evidence of the person's household income (if any) from within 3 months prior to the date of the application, such as payslips and bank statements showing income.

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.3 and the person claims to live in a household with dependants, the sponsor must also keep documentary evidence to this effect. Documentary evidence might include a copy of the person's Medicare card, listing his or her child/children, copies of the birth certificates of the person's child/children, Community Services documentation, or Centrelink documentation.

If the person claims to pay child support, the sponsor must keep documentary evidence of these payments (a monthly statement from the Child Support Agency will suffice).

If the person does not have access to household income because of financial abuse, the sponsor must also keep documentary evidence to this effect, such as a statement from Police, their Health Practitioner, Family and Community Services, a counsellor and other social welfare groups.

Where a person is claiming acute economic hardship under 5.5.4 (Exceptions), a 'Work and Development Order – exceptional circumstances application' (which can be found at [www.sdro.nsw.gov.au](http://www.sdro.nsw.gov.au)) must be submitted to OSR (together with supporting documentation and details of any extenuating circumstances or hardship suffered by the person).

## **5.6 Serious addiction to drugs, alcohol or volatile substances**

### **Definition**

A person is considered to have a serious addiction to drugs, alcohol or volatile substances if he or she has a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by two (or more) of the following, occurring any time in the same 12-month period:

1. Tolerance, as defined by either of the following:
  - (a) A need for markedly increased amounts of the substance to achieve intoxication or the desired effect or

- (b) Markedly diminished effect with continued use of the same amount of the substance.
2. Withdrawal, as manifested by either of the following:
  - (a) The characteristic withdrawal syndrome for the substance or
  - (b) The same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.
3. The substance is often taken in larger amounts or over a longer period than intended.
4. There is a persistent desire or unsuccessful efforts to cut down or control substance use.
5. A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
6. Important social, occupational, or recreational activities are given up or reduced because of substance use.
7. The substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance (for example, current cocaine use despite recognition of cocaine-induced depression or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).<sup>10</sup>

## **Proof**

Where eligibility is claimed on the ground of a serious addiction to drugs, alcohol or volatile substances, the sponsor must keep a letter or other documentation from one of the following:

- the applicant's treating doctor, psychiatrist, registered psychologist, nurse working in the field of drug and alcohol addiction, or social worker,
- drug and alcohol case worker or counsellor,
- youth service case worker or counsellor,
- residential (or outpatient) rehabilitation service provider or
- other government agency or non-government organisation with expertise in working with people with serious addictions to drugs, alcohol or volatile substances, including, but not limited to Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, or the Department of Family and Community Services.

Supporting documentation should be no older than 6 months prior to the date of the application, and should explain:

- the nature, severity and effects of the addiction and
- how long the applicant has had the addiction.

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<sup>10</sup> Based on the definition of addiction, substance related disorders and alcoholism in American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders: DSM-V. 5<sup>th</sup> edition, Washington D.C: American Psychiatric Association (2013).

Examples of this documentation include case notes, medical certificates, evidence of financial distress, or a letter of support from the person or agency that supplied documents confirming proof of eligibility.

### **5.7 Applications where supporting documentation is not available**

In the event that a sponsor is of the view that a person is eligible for the WDO scheme, but the client does not have the supporting documentation listed in clauses 5.1 – 5.6 above, the sponsor may make an application to OSR to waive the requirements in these Guidelines and endorse their assessment of the person's eligibility. OSR will waive these requirements in exceptional circumstances, where it is satisfied that there are sound reasons why the required documentation is not available.

## **6 WDO activities**

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### **6.1 General**

As noted above, a person can undertake one or more of the following activities to satisfy their fine debt under a WDO:

- (a) unpaid work with or on behalf of an approved organisation,
- (b) medical or mental health treatment in accordance with a health practitioner's treatment plan,
- (c) an educational, vocational or life skills course,
- (d) financial or other counselling,
- (e) drug or alcohol treatment,
- (f) a mentoring program (this option is only available if the person is under 25 years of age).<sup>11</sup>

However, if a person is eligible for a WDO solely on the ground that they have a serious addiction to drugs, alcohol or volatile substances, he or she must undertake drug or alcohol treatment and /or counselling as part of their WDO<sup>12</sup>.

It is the responsibility of the sponsor (not OSR) to ensure that the activities proposed to be undertaken in a WDO are suitable and appropriate for the client.

### **6.2 Unpaid work with or on behalf of an approved organisation**

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<sup>11</sup> *Fines Act 1996*, s 99A.

<sup>12</sup> *Fines Act 1996*, s 99B (2A)

Unpaid work must be undertaken with or on behalf of a sponsor organisation. The participant must be covered by the sponsor organisation's insurance and workplace health and safety (WHS) provisions. No remuneration in cash or in-kind can be provided to the participant.

The activity should be a benefit to the community. Examples of unpaid work include assisting at a charity store or recycling service, assisting at a local animal shelter, driving a bus for an aged care facility, cooking, serving or delivering meals, land or bush care programs or undertaking administrative duties.

Unpaid work must not provide a personal benefit to someone involved in supporting or supervising the WDO client (see section 12.8 – Conflict of interest).

### **6.3 Medical or mental health treatment**

Medical or mental health treatment must be undertaken in accordance with a health practitioner's treatment plan (that is, treatment that is prescribed or recommended by a health practitioner).

A mental health treatment plan may encompass pharmacotherapy, as well as face-to-face sessions with a psychiatrist or psychologist. Treatment undertaken in a mental health facility or in the community under the *Mental Health Act 2007*, as well as treatment undertaken in accordance with section 32 of the *Mental Health (Forensic Provisions) Act 1990*, can be counted toward a WDO.

A medical treatment plan may include a plan tailored to the individual's complex health care needs. For example, an ATSI Health Check Plan may be counted toward a WDO.

### **6.4 Educational, vocational and life skills courses**

Educational courses include courses undertaken at university, TAFE or other educational institutions.

Vocational courses encompass a wide range of courses that are designed to assist people enter or participate in the workforce. They include courses undertaken at TAFE and university. They also include courses undertaken in community or private colleges, or through a job service provider (as long as the activity is in addition to any Centrelink obligations), for example, a course on computer skills.

Life skills courses foster the personal, social and practical skills that help people function in society, on an independent basis.<sup>13</sup> For the purposes of the WDO scheme, they include courses that focus on practical skills, such as cooking and driving, as well as courses that focus on psycho-social skills, such as problem-solving, anger management, conflict resolution and parenting.

The three types of courses listed above are not mutually exclusive. For instance, a course may be considered both educational and vocational and is still considered to be one course. When attendance at a course forms part of a person's eligibility for a Centrelink benefit or part of a mutual obligation, it cannot be counted toward a WDO (see section 6.9).

## **6.5 Financial or other counselling**

Financial counselling specifically involves 'undertaking financial analyses, generation of options and advice about debt issues and supporting the client in negotiation with creditors or advocating on their behalf'.<sup>14</sup> A financial counsellor also seeks to prevent future debt issues through budgeting strategies, increased access to income and adjustment to lifestyle.

Counselling is a professional activity, in which the counsellor or therapist helps the client explore and resolve issues of an interpersonal or personal nature.<sup>15</sup>

Other forms of counselling may be directed at improving a client's mental health, or resolving their emotional or behavioural issues. Counselling might also take the form of family counselling, when a whole family undertakes counselling to improve family communication and relationships, solve a problem, or adjust to a new situation. Group counselling, such as domestic violence group sessions, may also be counted.

Case management is a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's holistic needs through communication and available resources to promote quality cost effective outcomes.<sup>16</sup>

A client's attendance at a case management meeting with their WDO case manager or other case worker can be counted as counselling for the purposes of a WDO.

## **6.6 Drug and alcohol treatment**

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<sup>13</sup> This definition is based on the definitions of life skills given by the International Bureau of Education Glossary of Curriculum Terminology, Draft (Consultation Version) 2013, page 25.

[http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/drafts/IBE\\_curriculum\\_glossary\\_final.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/drafts/IBE_curriculum_glossary_final.pdf)

<sup>14</sup> Consumer Affairs Victoria Financial Counselling Services (funding and service agreements).

<sup>15</sup> This definition is based on the definition of counselling adopted by the Psychotherapy and Counselling Federation of Australia. (2015)

<http://www.pacfa.org.au/practitioner-resources/counselling-psychotherapy-definitions/>

<sup>16</sup> This definition is based on the definition of case management adopted by the Case Management Society of Australia and New Zealand. (2015) <http://www.cmsa.org.au/about-us/what-is-a-case-management>

Drug or alcohol treatment aims to assist people to overcome dependencies on, or misuse of, alcohol and/or other drugs. Various interventions may be used, including detoxification, medication or pharmacotherapy, counselling, behavioural therapy, group therapy, and 12-step programs. Such treatment may, but need not, occur in a residential facility. However mandatory drug and alcohol treatment that is ordered by a court cannot be counted towards a WDO (see section 6.9).

### **6.7 A mentoring program (for people under 25)**

Mentoring is a mutually beneficial relationship that involves a more experienced person helping a less experienced person to achieve their goals.<sup>17</sup> A mentoring relationship focuses on the needs of the mentee and is structured in a way that encourages progress towards the achievement of milestones and goals.

Mentoring programs can be offered to a range of young people, including school or university students, young employees, or ex-prisoners.

A client's attendance at a case management meeting with their WDO case manager or other case worker can be counted as mentoring for the purposes of a WDO where the client is under 25 years of age.

### **6.8 Variation or addition to WDO activities**

A variation or addition to the specific activities to be undertaken as part of a WDO will be permitted provided that:

- the organisation or health practitioner has approval to provide or supervise that kind of activity, and
- the sponsor notifies OSR (usually in the form of an application via the WDO self-service portal).

The variation or addition will be deemed approved if they do not hear from OSR within a week. However, principles regarding revocation as outlined in section 10 of these Guidelines will apply.

### **6.9 Specific activities**

The following activities **may be** legitimately included in a WDO:

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<sup>17</sup> Based on National Mentoring Association of Australia Inc (2014) *Mentoring Australia*  
<http://www.mentoring-australia.org/>

- voluntary activities undertaken while in gaol, juvenile detention or on community supervision,
- participation in voluntary court-diversion programs, such as the MERIT (Magistrates Early Referral into Treatment) and CREDIT (Court Referral of Eligible Defendants Into Treatment) programs,
- treatment undertaken in a mental health facility or in the community under the *Mental Health Act 2007*,
- treatment or activities undertaken in accordance with section 32 of the *Mental Health (Forensic Provisions) Act 1990*, where the Magistrate has dismissed the charge and no finding of guilt has been made.

The following activities **are not** legitimately included in a WDO:

- activities that are mandatory conditions of a court order, including orders made by the Drug Court under sections 7A or 7B of the *Drug Court Act 1998*, and activities undertaken as part of a Forum Sentencing Intervention Plan,
- activities which form part of a person's eligibility for Centrelink benefits or part of a mutual obligation (such as Work for the Dole),
- attendance at school during normal school hours for children of compulsory school age,
- activities undertaken for the purposes of a traineeship or an apprenticeship (including educational activities that are required by the traineeship or apprenticeship, such as attendance at TAFE).

However, OSR, in consultation with the Department of Justice, may allow a departure from these general rules in exceptional circumstances. An exception will be granted having regard to the following factors:

- the applicant suffers particular hardship, and
- permitting the applicant to include the relevant activity in his or her WDO would bring about compliance with, or engagement in, the activity that would not otherwise occur, and
- significant benefits are likely to result from the applicant's participation in the relevant activity.

## **7 Rate at which WDO satisfies fine debt**

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The maximum amount of fine debt that can be satisfied through a WDO is \$1000 per month. Different activities have different debt reduction or "cut-out" rates. These are detailed in the

table below. The cut-out rates are to be used as a guide to ensure consistency and equity in WDOs made by OSR.

However, in recognition of the fact that the individual circumstances of applicants may vary, sponsors have discretion to reduce the cut-out rate if it is deemed to be in the best interest of the client. In cases where a lower cut out rate is proposed, the sponsor must notify the client of this and retain records detailing the reason for their decision.

Applications for WDOs should be made having regard to the age, needs, family obligations, capacity and overall situation of the applicant and the potential benefit of the proposed activities for the applicant.

Regard should also be given to any legal obligations of the applicant (such as court ordered programs, or statutory obligations to attend school) which may limit their capacity to perform activities under a WDO. If this necessitates a departure from the cut-out rates or timeframes below, the sponsor may apply to the OSR for a variation to the cut-out rate. The application should outline why a different arrangement is justified.

A WDO application may propose a combination of activities (for instance, mental health treatment combined with a living skills course). However, the maximum overall amount of fine debt that can be satisfied through a WDO each month is \$1000. While a combination of activities is permissible (either direct or on referral), WDOs can only be supported by one sponsor at a time.

Activity	Cut-out rate
Unpaid work for, or on behalf of, an approved organisation	\$30 per hour worked or \$210 per full (7 hour) day, to a maximum of \$1000 per month. Breaks are not to be counted
Medical or mental health treatment in accordance with a practitioner's treatment plan	Up to \$1000 per month for full compliance (or a proportion for partial compliance).
Educational, vocational or life skills course	\$50 per hour or \$350 per full (7 hour) day, to a maximum of \$1000 per month. Breaks are not to be counted.
Financial or other counselling (including attending case management meetings)	\$50 per hour or \$350 per full (7 hour) day, to a maximum of \$1000 per month.
Drug or alcohol treatment	Up to \$1000 per month for full compliance (or a proportion for partial compliance).
Participation (as a mentee) in a	Up to \$1000 per month for full compliance (or a

mentoring program	proportion for partial compliance).
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## 8 Content of a WDO

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The terms of the WDO must be agreed between OSR, the applicant, and the sponsor supporting the application for the order.

A WDO must set out:

- the value of the activities that are to be undertaken under the order,
- the nature of the activities that are required under the order and
- the penalty notice or enforcement orders that will be satisfied or partially satisfied by completion of the order.

## 9 Effect of a WDO

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No enforcement action will be taken against a person, in respect of a fine to which a WDO relates, while a WDO is active. When a WDO is in force, any driver licence or vehicle sanctions or other enforcement action imposed on that person due to fine default will be lifted.

The stay of enforcement action will only apply in relation to existing fine and penalty notice debts to which a WDO relates. Action to recover new fines referred to OSR after the WDO is made will not be automatically stayed. It is the responsibility of the applicant or their sponsor to advise the OSR of new debts to enable enforcement action to be stayed for those also.

## 10 Variation and revocation of WDOs

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OSR may vary and/or revoke a WDO in any of the following circumstances:

- (a) If requested to do so by, or on behalf of, the person subject to the WDO. For instance, OSR may vary a WDO to incorporate additional fines incurred by the person, or to incorporate new or different activities.
- (b) If a WDO application or a report on a WDO contains false or misleading information.
- (c) If OSR is of the opinion that the person subject to the WDO is not eligible, or is no longer eligible, for the scheme.
- (d) If OSR is of the opinion that, having regard to the circumstances of the applicant, it is more appropriate for the person to pay the fine.

- (e) If the approved person supervising the WDO is unable to continue to supervise the order, is in breach of their obligations or is no longer approved to participate in the WDO scheme.
- (f) If OSR is satisfied that the person subject to the WDO has failed, without reasonable excuse, to comply with the WDO. However, OSR cannot vary and/or revoke the WDO on this ground unless it has taken reasonable steps to consult with the case manager and sponsor supporting the order.<sup>18</sup>

The sponsor should notify OSR immediately if there has been a material change in their client's circumstances and he or she is no longer eligible for a WDO. This is to allow OSR the opportunity to assess the client's situation and discuss other fine payment or mitigation options with the client and his or her sponsor.

Upon making a variation and/or revocation, the OSR will write to the client and the sponsor supporting the order as soon as possible setting out the reasons for the variation and/or revocation.

In circumstances where a WDO application has been revoked because of false or misleading information, the WDO may be deemed invalid and all fine debt reinstated. In circumstances where a WDO report is deemed to have included false or misleading information, OSR may deem the report invalid and reinstate the fine debt satisfied through the report.

## 11 Completing a WDO

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On successful completion of a WDO, the fine(s) to which the order relates is taken to be satisfied at the rate set out in the order.<sup>19</sup>

Partial completion of a WDO will result in only part satisfaction of the fine(s) to which the order relates, at the rate set out in the order.<sup>20</sup>

If a person has a fine debt after a WDO has been closed, the person should enter into arrangements with OSR to satisfy that debt. Otherwise OSR may recommence enforcement action under the *Fines Act 1996* to recover that debt.

## 12 Approved sponsors

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Sponsors must apply to become an approved WDO sponsor. Application forms are available on the OSR website: <http://www.sdoro.nsw.gov.au/business/wdo.php>.

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<sup>18</sup> *Fines Act 1996*, s99C

<sup>19</sup> *Fines Act 1996*, s99E(1)

<sup>20</sup> *Fines Act 1996*, s99E(2)

Applying sponsors must meet their specific conditions of approval (12.1 and 12.2, respectively) and agree to meet the ongoing requirements of approval set out in 12.5.

The Secretary of the Department of Justice (or their delegate) approves all applications to support and supervise WDOs.

### **12.1 Health practitioners**

For the purposes of a WDO, health practitioner means a:

- (a) registered medical practitioner, or
- (b) registered psychologist, or
- (c) nurse.<sup>21</sup>

For the purpose of these Guidelines, the terms medical practitioner, psychologist and nurse have the same meanings as in the *Health Practitioner Regulation National Law (NSW) No 86a*.

Health practitioners who fall within the above definition and are qualified to provide medical or mental health treatment or drug or alcohol treatment can apply for approval to support applications for treatment to be undertaken under a WDO, and supervise that treatment.<sup>22</sup> A health practitioner can be approved to provide medical or mental health treatment, and/or drug and alcohol treatment.

To be approved, the health practitioner must demonstrate that they meet the following conditions of approval:

- provide documentary evidence of their registration as a health practitioner,
- provide area of specialisation in provision of medical or mental health treatment or drug and alcohol treatment, if applicable,
- detail any specific requirements or criteria clients must meet (medical or otherwise) to be able to undertake treatment with the practitioner.

The health practitioner should also maintain evidence of their ongoing registration as a health practitioner. If any conditions, undertakings, or reprimands are placed against a health practitioner's registration following their WDO sponsor approval, the health practitioner must notify the Department of Justice. A health practitioner's approval in the WDO scheme will not be affected if the health practitioner can demonstrate that the conditions, undertakings, or reprimands against their registration status do not affect their ability to support WDOs.

### **12.2 Organisations**

Organisations applying for WDO sponsorship approval must demonstrate that the following conditions of approval are met:

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<sup>21</sup> *Fines Act 1996*, s99A

<sup>22</sup> *Fines Act 1996*, s99A

- be a non-profit organisation with an ABN, a government agency, or a statutory body representing the Crown,
- have current public liability and other appropriate insurance covering proposed WDO activities (for instance, if providing counselling, medical or mental health treatment, or drug and alcohol treatment, appropriate professional indemnity insurance cover is required),
- have appropriately trained, experienced or accredited staff, either for working with the target group for WDOs, or for providing the treatment or activities which will be undertaken as part of the WDO. Approval will only be given to support applications within the organisation's areas of expertise,
- have established policies and procedures regarding work health and safety, and
- if previously government funded, have complied with the terms of that funding and any performance agreement. If no government funding has been received, attempts will be made to verify the organisation's accountability, integrity and good governance through other means. This may include checks with the organisation's auditors, or other bodies that have worked with the organisation and/or its employees.

To remain an approved organisation, the organisation must continue to meet these eligibility criteria and maintain evidence to that effect.

Government agencies need only show that they have appropriately trained, experienced or accredited staff, either for working with the target group for WDOs, or for providing the treatment or activities which will be undertaken as part of the WDO. The other criteria are deemed to be satisfied.

Inter-state organisations (i.e. outside NSW) may be approved to participate, provided they meet the eligibility criteria outlined above.

The Department of Justice may, in consultation with OSR, approve for-profit organisations on a case by case basis.

In addition to meeting the eligibility criteria outlined above, for-profit organisations must demonstrate that the organisation's objectives are not inconsistent with the objectives of the WDO scheme, and the organisation's governance and funding arrangements do not operate in a manner contrary to the interests of WDO clients. The process for doing so is outlined at 12.3.

Approvals of for-profit organisations will lapse after 12 months. For-profit organisations wishing to continue as approved organisations may apply to have their approval renewed before their approval lapses by verifying that there has been no change in their objectives, governance or funding arrangements. Where a for-profit has had a change in their objectives, governance or funding arrangements, they will need to re-apply.

### **12.3 Process for becoming an approved sponsor**

The application must stipulate the client group with which the organisation or health practitioner works. The application should also set out the treatment or activities that the organisation or health practitioner will provide to eligible people. Health practitioners can only be approved to provide medical or mental health treatment and/or drug and alcohol treatment (see 12.1). Organisations may apply to:

- provide activities directly to eligible people undertaking WDOs, and/or
- refer a client to other service providers to undertake activities as part of a WDO, while still supervising the client.

Applications from for-profit organisations must provide evidence of the organisation's objectives, governance and funding arrangements. For-profit organisations must also provide a brief proposal to the Department of Justice which outlines how the organisation intends to engage clients in WDOs.

### **12.4 Variations of approval**

A sponsor may apply to vary WDO activities and service locations. Variations to approval will be granted by the Department of Justice. Health practitioners must have the same registration number and still meet the conditions of approval outlined in 12.1. Organisations must have the same ABN, and still meet the conditions of approval outlined in 12.2. A variation form is available on the OSR website: <http://www.sdoro.nsw.gov.au>.

### **12.5 Ongoing requirements of approval**

Both approved organisations and approved health practitioners, must agree at the time of approval and continue once approved to:

- assess eligibility of persons prior to submitting a WDO application and maintain required proof of eligibility documents as set out in 5.1 – 5.7 and 13.1 below,
- comply with minimum record keeping requirements, storage and access to WDO records as set out in 13.1 below. The record keeping requirements include privacy requirements,
- comply with reporting requirements as set out in 13.2 below,
- participate in audit activities, and
- have a formal complaints procedure in place.

### **12.6 Referrals to other service providers**

Organisations and health practitioners can be approved to refer WDO clients to third party service providers, while the sponsor continues to supervise the client. Referring organisations and health practitioners should be satisfied that the third party provider:

- has current public liability and other appropriate insurance covering its activities (for organisations that are not health practitioners)

- holds a current registration with the Australian Health Practitioner Regulation Agency (AHPRA) (for health practitioners) or the Australian Association of Social Workers (for social workers),
- has appropriately trained, experienced or accredited staff for providing the treatment or activities which will be undertaken as part of the WDO,
- has established policy and procedures regarding work health and safety, and
- has undertaken a Working with Children check for person(s) responsible for the supervision of activities under the WDO, if the client is under 18 years of age.

Referrals for drug and alcohol treatment can be made to Alcoholics Anonymous, Narcotics Anonymous and Smart Recovery Australia.

It is the responsibility of sponsors to collect and retain evidence of compliance with any activity or treatment undertaken on referral.

### **12.7 Fees, gifts and personal benefits**

Sponsors must not receive any payment, gift or personal benefit from a person applying for, or subject to, a WDO. This includes administrative fees and fees for activities associated with a WDO.

This clause does not affect fees or charges that would be incurred by the person if the WDO was not in place, including but not limited to fees for medical treatment or enrolment in a TAFE course.

### **12.8 Conflicts of interest**

A conflict of interest arises where the personal interests of someone involved in supporting a potential WDO client, or supervising a client, has influenced, may influence, or may be perceived as influencing, their professional decision-making regarding the client's eligibility for, and fulfilment of, a WDO.

Sponsors should seek to avoid conflicts of interest. However, if an actual, potential or perceived conflict of interest arises, the sponsor must notify OSR through the self-service portal or by sending an email to [wodosdro@osr.nsw.gov.au](mailto:wodosdro@osr.nsw.gov.au) explaining how it proposes to manage the conflict. Allegations of misconduct

If the Department of Justice receives an allegation that a sponsor has seriously or repeatedly failed to comply with their conditions of approval, these guidelines, the *Fines Act 1996*, or any other law, the Department of Justice may give written notice to the sponsor that a review of their WDO records and/or an investigation of their alleged failure(s) to comply, will be undertaken. The Department of Justice must notify OSR of any notice sent under this clause.

OSR may refuse to approve applications for WDOs supported by a sponsor that is sent a notice under this clause until the Department of Justice notifies the sponsor and OSR that the review and/or investigation is complete.

## 12.9 Revocation of sponsor approval

If a sponsor fails seriously or repeatedly to comply with:

- their conditions of approval,
- their obligations under these guidelines or the *Fines Act 1996*, or
- any other law

OSR, in agreement with the Department of Justice, may refuse to approve any applications for a WDO which are supported by that sponsor, pending revocation by the Department of Justice. The Department of Justice may also revoke a sponsor's approval to participate in the WDO scheme.

When deciding whether to revoke the approval of a sponsor organisation or health practitioner to support WDO applications, the Department of Justice will afford the organisation or practitioner procedural fairness, and may consult with representatives from other NSW Government agencies as appropriate.

An organisation or health practitioner may withdraw their participation as an approved sponsor at any time. Such requests should be made by email to the Department of Justice ([WDO Sponsor.Admin@osr.nsw.gov.au](mailto:WDO Sponsor.Admin@osr.nsw.gov.au)).

## 13 Record-keeping and reporting requirements

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### 13.1 Record-keeping requirements

Sponsors must keep WDO records containing the following information:

- documentation to demonstrate their ongoing compliance with the conditions of their WDO sponsor approval (see 12.1, 12.2 and 12.5),
- documentation to support their assessment of client eligibility to undertake a WDO, including proof of eligibility documents (see 5.1 to 5.7),
- a copy of the WDO and/or any correspondence from OSR declining to issue an order,
- documentation showing the level of compliance with the WDO (this may include: hours or days of attendance or participation, completion of any assessments, compliance with any course of treatment).

Storage of and access to WDO records:

- WDO records must be held securely, either as a hardcopy in a lockable cabinet or as electronic copies on a password protected computer,
- staff are to treat WDO records as confidential,
- WDO records must be retained for at least five years following the completion or revocation of the WDO.

On request, representatives of OSR and the Department of Justice are to be provided with copies of the WDO records, subject to reasonable notice being given to the sponsor.

Independent auditors ensuring the integrity of the WDO scheme are to be provided with copies of the WDO records, provided reasonable notice is given to the sponsor.

Sponsors are to provide copies of documentation relating to a client's WDO, in response to reasonable requests by the person, their nominated carer, or their lawyer.

### 13.2 Reporting requirements

Sponsors are required to report to OSR monthly, on the progress of each active WDO under their supervision. These reports must detail the number of hours of activities deemed satisfactorily completed by clients (or conversely where no activities have been completed for that month). Evidence of completed hours must be retained (see Section 13.1).

Sponsors must report to OSR as soon as possible within seven days following the successful completion of a WDO. At this time, the client should contact OSR to discuss how they propose to address any outstanding amount of fines.

## 14 Auditing of sponsors

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As part of the approval process, all sponsors agree to participate in audits. Sponsors have an obligation to satisfactorily respond to any audit findings, within specified timeframes, as may be directed by the Department of Justice or OSR. Withdrawal from the WDO scheme does not necessarily remove a sponsor from being subject to audits for the period of their approval in the scheme.

## 15 Feedback and complaints

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To provide feedback or make a complaint relating to the WDO scheme, sponsors and clients can access the online feedback form at <http://www.sdرو.nsw.gov.au/contact/feedback-wdo.php>.

Prior to submitting a complaint, the individual is encouraged to contact the person, organisation, health practitioner or agency involved to try and resolve the issue. If the issue is not resolved, a formal complaint can be made using the online form. All complaints about the WDO scheme will be considered in a confidential and timely manner.

If difficulties are experienced when attempting to access the online form or the individual does not have internet access, contact the WDO hotline on 1300 478 879.

## 16 Document history

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Version	Date	Reason for Amendment
1	1/07/2009	-
2	12/03/2012	To implement recommendations made by the evaluation of the WDO pilot
3		To update the guidelines following program audit and evaluation

## 17 Approval by Attorney General

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MARK SPEAKMAN

(Mark Speakman)

11/05/2017