

Fines Further Amendment Act 2008 No 110

[2008-110]



New South Wales

Status Information

Currency of version

Historical version for 17 July 2009 to 7 January 2010 (accessed 22 November 2024 at 17:04)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) (not commenced — to commence on 8.1.2010)
- **Proposed repeal**
The Act is to be repealed by sec 5 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 14 December 2009

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Fines Further Amendment Act 2008 No 110



New South Wales

An Act to amend the *Fines Act 1996* and other laws to make provision with respect to fines and their enforcement; and for other purposes.

1 Name of Act

This Act is the *Fines Further Amendment Act 2008*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Sections 1-5 and Schedules 1 [2], [9], [20], [24]-[28], [30] (except to the extent that it inserts section 101B (1) (a)), [31] (except to the extent that it inserts section 101B (6) (a)) and [34]-[36], 2.1 and 2.2 [1]-[3] and [5]-[8] commence on the date of assent to this Act.

3 Amendment of *Fines Act 1996 No 99*

The *Fines Act 1996* is amended as set out in Schedule 1.

4 Amendment of other Acts and Regulations

Each Act and Regulation specified in Schedule 2 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of **Fines Act 1996**

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

issuing agency, in relation to a penalty notice or official caution, means the agency in or by which the appropriate officer who issued the penalty notice or gave the caution is employed or engaged.

penalty notice offence—see section 19A.

person in receipt of a Government benefit means:

- (a) a person in receipt of a pension or other benefit paid by the Commonwealth being a pension or benefit of a kind approved by the State Debt Recovery Office, or
- (b) a person belonging to a class of persons prescribed by the regulations.

reviewing agency, in relation to a penalty notice, means the State Debt Recovery Office or the issuing agency.

work and development order—see section 99A.

[2] (Repealed)

[3] Section 13 Referral for a court fine enforcement order

Omit “if the fine has not been paid by the due date.” from section 13 (1).

Insert instead:

if:

- (a) the fine has not been paid by the due date, or
- (b) the person is in receipt of a Government benefit and is seeking an order under section 100 (Time to pay) in relation to the fine, or
- (c) the person is seeking a work and development order in relation to the fine.

[4] Section 14 When an order may be made

Insert after section 14 (1):

(1A) Despite subsection (1), a court fine enforcement order may also be made if a

court has imposed a fine on a person and:

(a) the person is in receipt of a Government benefit and is seeking an order under section 100 (Time to pay) in relation to the fine, or

(b) the person is seeking a work and development order in relation to the fine.

(1B) The State Debt Recovery Office must not make a court fine enforcement order under subsection (1A) unless it determines to make the order under section 100, or the work and development order, sought by the person.

(1C) If the State Debt Recovery Office does not make a court fine enforcement order in respect of a matter referred to it by a registrar under section 13 (1) (b) or (c), it is to refer the matter back to the registrar.

[5] Section 19 Summary of penalty notice procedure

Insert after section 19 (1) (a):

(a1) Determine whether to give official caution rather than penalty notice

The appropriate officer determines whether to issue a penalty notice or whether an official caution would be more appropriate (see Division 1A).

[6] Section 19 (1) (b)

Omit "A penalty".

Insert instead "If it is determined that it is not appropriate to give an official caution, a penalty".

[7] Section 19 (1) (b1)

Insert after section 19 (1) (b):

(b1) Internal review

A reviewing agency may conduct a review of the decision to issue the penalty notice. If a review is conducted, the agency may withdraw the penalty notice or confirm the decision and issue a penalty reminder notice (see Division 2A).

[8] Part 3, Division 1A

Insert after Division 1:

Division 1A Official cautions

19A Appropriate officer may give official caution

- (1) An appropriate officer may give a person an official caution instead of issuing a penalty notice if the appropriate officer believes:
 - (a) on reasonable grounds that the person has committed an offence under a statutory provision for which a penalty notice may be issued (a **penalty notice offence**), and
 - (b) that it is appropriate to give an official caution in the circumstances.
- (2) In making a decision under subsection (1), an appropriate officer (other than a police officer) must have regard to the applicable guidelines relating to the giving of official cautions in respect of penalty notice offences.
- (3) In this section:

guidelines means guidelines:

 - (a) issued by the Attorney General that are published in the Gazette and made available on the internet site of the State Debt Recovery Office, or
 - (b) issued by the relevant issuing agency that are consistent with the guidelines issued by the Attorney General.

19B Official caution does not affect other powers

- An official caution in relation to a penalty notice offence does not affect the power of an appropriate officer or issuing agency to:
- (a) commence proceedings against the person to whom the official caution was given, or
 - (b) issue a penalty notice in relation to the offence, or
 - (c) take no further action, or
 - (d) take any other specified action permitted under this Act or the Act that establishes the penalty notice offence.

[9] (Repealed)

[10] Part 3, Division 2A

Insert after Division 2:

Division 2A Internal review

24A Application for review of penalty notice

- (1) An application may be made by or on behalf of any person for a review of the decision to issue a penalty notice in respect of the person.
- (2) An application for a review:
 - (a) is to be made in writing to the issuing agency for the penalty notice or to the State Debt Recovery Office (if the fine under the penalty notice is payable to the State Debt Recovery Office), and
 - (b) is to include the mailing address of the applicant and the grounds on which the review is sought (including supporting evidence).
- (3) An application for a review may be made at any time up until the due date specified in the penalty reminder notice for payment in relation to the offence concerned even if the whole or part of the amount payable under the penalty notice has been paid.
- (4) The regulations may make provision for or with respect to applications under this section.

24B Circumstances when agency is not required to conduct a review

- (1) An agency that receives an application for a review of a decision to issue a penalty notice is not required to conduct a review of the decision under this Division in any of the following circumstances:
 - (a) the agency notifies the applicant in writing, within 10 days after receiving the application, that it has decided not to conduct a review under this Division and gives reasons for its decision,
 - (b) a review of the decision has already been conducted under this Division,
 - (c) such other circumstances as may be prescribed by the regulations.
- (2) An agency that decides not to conduct a review may take such other action as it sees fit, including withdrawing the penalty notice to which an application relates.

24C Review by reviewing agency

- (1) Except as provided by section 24B, an agency that receives an application for review under this Division must conduct a review in accordance with this Division.
- (2) The reviewing agency is to ensure that a review under this Division is conducted by a person who was not involved in making the decision that is the subject of

the review.

24D Request for additional information

- (1) When conducting a review under this Division, a reviewing agency may request, in writing, additional information from the applicant.
- (2) The additional information must be provided by the applicant to the reviewing agency within 14 days of the request.
- (3) If the information is not provided within the time specified, the review may be conducted without that information.

24E Outcome of review

- (1) After reviewing a decision under this Division, a reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice.
- (2) A reviewing agency must withdraw a penalty notice if it finds any of the following grounds to be made out:
 - (a) the penalty notice was issued contrary to law,
 - (b) the issue of the penalty notice involved a mistake of identity,
 - (c) the penalty notice should not have been issued, having regard to the exceptional circumstances relating to the offence,
 - (d) the person to whom the penalty notice was issued is unable, because the person has an intellectual disability, a mental illness, a cognitive impairment or is homeless:
 - (i) to understand that the person's conduct constituted an offence, or
 - (ii) to control such conduct,
 - (e) an official caution should have been given instead of a penalty notice, having regard to the relevant guidelines under section 19A,
 - (f) any other ground prescribed by the regulations.
- (3) A reviewing agency may, at its discretion, also decide to withdraw a penalty notice on a ground other than those specified in subsection (2).
- (4) A reviewing agency is to notify the applicant in writing of the outcome of the review within 42 days of receipt of the application, or within 56 days if additional information has been requested under this Division.

24F Action to be taken if decision to issue penalty notice is confirmed

- (1) If, after a review under this Division, a reviewing agency confirms a decision to issue a penalty notice in respect of an offence by a person, it must, in accordance with Division 3, serve a penalty reminder notice in respect of the offence on the person.
- (2) A penalty reminder notice served under subsection (1) replaces any previous penalty reminder notice in respect of the offence.
- (3) If a penalty reminder notice served under subsection (1) replaces a previous penalty reminder notice, the time for serving the statement under section 36 (2) (a) continues to be the time specified in the penalty reminder notice that has been replaced.

24G Effect of withdrawal of penalty notice

- (1) If a reviewing agency withdraws a penalty notice, following a review under this Division or otherwise, it may, if it considers it appropriate to do so, give an official caution to the person in accordance with Division 1A as if it were an appropriate officer.
- (2) If a penalty notice is withdrawn:
 - (a) any penalty reminder notice, in respect of the offence to which the penalty notice relates, is also taken to be withdrawn, and
 - (b) if all or part of the amount under the penalty notice or penalty reminder notice has been paid:
 - (i) any action taken to record demerit points against a person in the demerit points register kept under the *Road Transport (Driver Licensing) Act 1998* because of that payment is to be reversed by the Roads and Traffic Authority, and
 - (ii) the amount that has been paid is repayable to the person to whom the penalty notice was directed.

24H Agency may review a decision on its own motion

- (1) Nothing in this Division limits the power of a reviewing agency to review a decision to issue a penalty notice, or withdraw a penalty notice, on its own motion.
- (2) If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice (or a penalty reminder notice in respect of the offence to which the penalty notice relates) has been paid, no person is liable to any further proceedings for the alleged offence.

24I Review terminated if matter dealt with by court

If a person elects to have a matter dealt with by a court under this Part while a review under this Division is in progress, the review is terminated on the person making that election.

24J Reviewing agencies may enter into arrangements with respect to functions under Division

A reviewing agency may enter into arrangements with another person or body under which the functions of the agency under this Division are exercised by that person or body on behalf of the agency.

[11] Section 27 What a penalty reminder notice must say

Insert after section 27 (1) (a):

- (a1) of the steps to be taken for seeking a review of the decision to issue the penalty notice, and

[12] Section 42 When a penalty notice enforcement order may be made

Insert after section 42 (1) (a):

- (a1) any review to be conducted under Division 2A has been completed and the applicant has been notified of the outcome of the review, and

[13] Section 42 (1) (b)

Omit the paragraph. Insert instead:

- (b) a penalty reminder notice has been served on the person:
 - (i) after the end of the time specified in the penalty notice as the time within which the amount payable under the notice may be paid, or
 - (ii) if a review has been conducted under Division 2A, after that review, and

[14] Section 42 (1AA)-(1CC)

Insert after section 42 (1):

- (1AA) Despite subsection (1), the State Debt Recovery Office may also make a penalty notice enforcement order if it receives, in respect of an amount owed by a person under a penalty notice, an application by the person:

(a) for an order under section 100 (Time to pay) in relation to the amount and the person is in receipt of a Government benefit, or

(b) for a work and development order in relation to the amount.

(1BB) The State Debt Recovery Office is not to make a penalty notice enforcement order under subsection (1AA) unless it determines to make the order under section 100, or the work and development order, sought by the person.

(1CC) On the making of an order under subsection (1AA):

(a) the person who has been served with the penalty notice to which the order relates can no longer elect to have the matter dealt with by a court in accordance with section 23A, and

(b) the decision to issue the penalty notice can no longer be reviewed under Division 2A.

[15] Section 42 (1A) (c)

Insert at the end of section 42 (1A) (b):

, or

(c) if a review has been conducted under Division 2A and a penalty reminder notice has been served under section 24F (1)—42 days after service of that notice.

[16] Section 42 (1B)

Insert after section 42 (1A):

(1B) If more than one date is applicable under subsection (1A), the later of those dates is the relevant date for the purposes of that subsection.

[17] Section 42 (2) (a)

Insert “, or the relevant matters in subsection (1AA),” after “(1) (d)”.

[18] Section 46 Withdrawal of order

Insert at the end of section 46 (2):

Note—

Section 49A (5) also requires a penalty notice enforcement order to be withdrawn if an issuing agency determines that a penalty notice should be withdrawn following a review under section 49A.

[19] Section 49A

Omit the section. Insert instead:

49A Review of penalty notice before annulment

- (1) Before it annuls a penalty notice enforcement order, the State Debt Recovery Office is to seek a review of the decision to issue each penalty notice to which the penalty notice enforcement order applies if:
 - (a) it has reason to suspect that the penalty notice should be withdrawn having regard to any of the matters set out in section 24E (2), and
 - (b) a review of the decision to issue the penalty notice has not been conducted under this section or Division 2A.
- (2) A review is to be conducted by the relevant issuing agency.
- (3) A review is to be dealt with in the absence of the parties, unless the issuing agency otherwise determines.
- (4) The issuing agency must notify the applicant for the annulment and the State Debt Recovery Office of its determination on the review of the decision to issue the penalty notice.
- (5) If the issuing agency determines that a penalty notice should be withdrawn (in whole or in part), the State Debt Recovery Office must withdraw the penalty notice enforcement order (in whole or in part) under section 46.
- (6) The State Debt Recovery Office must, if a penalty notice is not withdrawn on review or there is no decision on a review within 42 days after referral for review, grant the application for annulment and annul the penalty notice enforcement order under section 49.
- (7) An issuing agency may enter into arrangements with another person or body (including the State Debt Recovery Office) under which the functions of the issuing agency under this section are exercised by that person or body on behalf of the issuing agency.

[20] (Repealed)

[21] Section 58 Summary of enforcement procedure

Insert “or make a work and development order in respect of the fine defaulter for the purposes of satisfying all or part of the fine” after “unpaid fines” in section 58 (1) (g).

[22] Part 4, Division 8

Omit the heading to Division 8. Insert instead:

Division 8 Fine mitigation

Subdivision 1 Work and development orders

99A Definitions

In this Subdivision:

approved organisation means a person or body approved by the Director-General of the Attorney General's Department.

approved person, in relation to a work and development order, means:

- (a) an approved organisation, or
- (b) if the work and development order involves medical or mental health treatment, a health practitioner qualified to provide that treatment.

health practitioner means:

- (a) a registered medical practitioner, or
- (b) a registered psychologist, or
- (c) a nurse within the meaning of the *Nurses and Midwives Act 1991*.

work and development order means an order made under this Subdivision requiring a person to do any one or more of the following in order to satisfy all or part of a fine:

- (a) undertake unpaid work for, or on behalf of, an approved organisation (but only with the agreement of that organisation),
- (b) undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,
- (c) undertake an educational, vocational or life skills course,
- (d) undergo financial or other counselling,
- (e) undergo drug or alcohol treatment,
- (f) if the person is under 25 years of age, undertake a mentoring program.

99B Making an order

- (1) A work and development order may be made by the State Debt Recovery Office with respect to a person in relation to all or part of an unpaid fine if:
 - (a) a fine enforcement order has been made with respect to the person in relation to the fine, and
 - (b) the person has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship, and
 - (c) a community service order is not in force against the fine defaulter in respect of the fine, and
 - (d) an application is made in accordance with this Subdivision.
- (2) An application for an order is to:
 - (a) be made to the State Debt Recovery Office by or on behalf of the person, and
 - (b) be supported by each approved person who is to supervise the person in complying with the order, and
 - (c) set out the grounds for making the order (including supporting evidence), the activities that are proposed to be carried out under the order and a proposed time for the completion of those activities.
- (3) An application may be made in anticipation of a fine enforcement order being made with respect to the person in relation to the fine.
- (4) If the regulations prescribe a maximum number of work and development orders that may be made in any particular period, the State Debt Recovery Office is not to make an order during that period if satisfied that the number of such orders will exceed the number prescribed (even if directed to do so by the Hardship Review Board under section 101B (6)).
- (5) If the State Debt Recovery Office determines to make an order, it is to make it in such terms as are agreed between it, the applicant and each approved person.
- (6) An order is to specify:
 - (a) the value of the activities that are to be undertaken under the order for the purposes of satisfying the fine to which the order relates, and
 - (b) the nature of any unpaid work that may be required under the order.
- (7) No enforcement action is to be taken against a person under this Part in respect of a fine to which a work and development order relates while the order is in

force.

99C Variation or revocation of order

- (1) The State Debt Recovery Office may vary or revoke a work and development order:
 - (a) if requested to do so by or on behalf of the person subject to the order, or
 - (b) if it is satisfied that the person subject to the order has failed, without reasonable excuse, to comply with the order.
- (2) The State Debt Recovery Office is not to take action under subsection (1) (b) unless it has taken reasonable steps to consult with the person subject to the order and each approved person in relation to the order.
- (3) An order ceases to be in force when it is revoked.

99D No appeal except to Hardship Review Board

Except as provided by section 101B, an appeal does not lie in respect of the making of, the failure to make or the varying or revocation of, a work and development order.

99E Satisfaction of order

- (1) If a person subject to a work and development order:
 - (a) complies with the order, the fine, or the part of the fine, to which the order relates is taken to be satisfied, or
 - (b) pays the fine (or the unsatisfied balance of the fine having regard to the activities already undertaken under the order), the order is taken to be satisfied.
- (2) If a person subject to a work and development order complies with some but not all of the activities required by the order, the fine, or the part of the fine, to which the order relates is taken to be satisfied by the value of the activities that have been undertaken at the rate or rates set out in the order.

99F Civil liability

- (1) In this section:

person involved, in relation to unpaid work under a work and development order, includes any person (including a corporation):

 - (a) for whose benefit that work is performed, or
 - (b) who directs or supervises that work, specifies its terms or conditions or

controls it, or

- (c) who owns or occupies the premises or land on which that work is performed, but does not include the person by whom the work is performed.
- (2) No act or omission of a person by whom unpaid work under a work and development order is performed gives rise to civil liability on the part of any person involved in that work if the act or omission occurs in the course of that work.
- (3) No act or omission of a person involved in unpaid work under a work and development order gives rise to civil liability to the person by whom the work is performed on the part of the person so involved if the act or omission occurs in the course of that work.
- (4) A civil action that would, but for subsection (2) or (3), lie against a person involved in unpaid work lies instead against the Crown.
- (5) Subsections (2) and (4) do not apply to an act or omission if it was, or was a necessary part of, an act or omission that was expressly required by the person involved in that work but was not necessary to carry out the work specified in the work and development order.
- (6) Subsections (3) and (4) do not apply to an act or omission if:
- (a) the work concerned was not work specified in the work and development order, or
 - (b) the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.
- (7) It is a term of a work and development order that the person subject to the order must disclose as soon as possible to the State Debt Recovery Office and to each approved person:
- (a) any medical, physical or mental condition of which the person is aware (being a condition of a kind that the person is aware substantially increases the risk to the person of injury in performing work of any kind), and
 - (b) any substantial change in that condition.
- (8) The State Debt Recovery Office may, on behalf of the Crown, settle any action that lies against the Crown because of this section, and may do so on such terms as it thinks fit.

99G Persons performing work under orders not workers

A person who undertakes unpaid work under a work and development order is not to be taken to be employed by, or in a contract of services with, the Crown or any other person and is not:

- (a) a worker for the purposes of the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998*, the *Annual Holidays Act 1944* or the *Long Service Leave Act 1955*, or
- (b) an employee (however described) for the purposes of the *Industrial Relations Act 1996* or any other Act or law.

99H Delegation by approved persons

An approved person (other than an individual) may delegate any of the approved person's functions under this Subdivision with respect to a work and development order to an officer or employee, other than this power of delegation.

99I Guidelines

The Attorney General, in consultation with the Treasurer, is to issue guidelines with respect to work and development orders and the State Debt Recovery Office is to have regard to those guidelines in the exercise of any of its functions under this Subdivision.

99J Regulations

- (1) The regulations may make provision for or with respect to work and development orders.
- (2) Without limiting subsection (1), the regulations may prescribe a date after which applications for work and development orders can no longer be made.

Subdivision 2 Time to pay and writing off fines

[23] Section 100 Time to pay

Insert after section 100 (1):

- (1A) Despite subsection (1), an application for time to pay a fine may be made by a person in receipt of a Government benefit in respect of a fine before a fine enforcement order is made in the matter.

[24]-[28] (Repealed)

[29] Part 4, Division 8, Subdivision 3, heading

Insert before section 101A:

Subdivision 3 **Hardship Review Board**

[30] Section 101B Reviews by Hardship Review Board

Omit section 101B (1). Insert instead:

- (1) The Hardship Review Board may, on an application by or on behalf of a fine defaulter, review a decision by the State Debt Recovery Office with respect to the following:
 - (a) the making of, the failure to make or the varying or revocation of, a work and development order,
 - (b) the making of, or the failure to make, an order under section 100,
 - (c) the writing off or the failure to write off, the whole or part of, an unpaid fine.

[31] Section 101B (6)

Omit the subsection. Insert instead:

- (6) On a review, the Hardship Review Board may direct the State Debt Recovery Office to do any one or more of the following in respect of the fine defaulter on such terms as the Board may direct:
 - (a) make, revoke or vary a work and development order,
 - (b) make, revoke or vary an order under section 100,
 - (c) write off, in whole or in part, an unpaid fine.

[32] Section 101B (7)

Omit "100 or section". Insert instead "99B, 100 or".

[33] Part 4, Division 9, heading

Insert after section 101C:

Division 9 **Miscellaneous**

[34]-[36] (Repealed)

Schedule 2 Amendment of other Acts and Regulations

(Section 4)

2.1

(Repealed)

2.2 Fines Regulation 2005

[1]-[3] (Repealed)

[4] Clause 5 (1A)

Insert after clause 5 (1):

(1A) No fee is payable under subclause (1) (a) if the fine enforcement order is made under section 14 (1A) or 42 (1AA) of the Act.

[5]-[8] (Repealed)

[9] Clauses 10A and 10B

Insert after clause 10:

10A Maximum number of work and development orders

- (1) For the purposes of section 99B (4) of the Act, 2,000 is the maximum number of work and development orders that may be made during the period of 2 years that commences on the commencement of Subdivision 1 of Division 8 of Part 4 of the Act.
- (2) If more than one work and development order is made in respect of the same person during the period referred to in subclause (1), those orders are to count as one order for the purposes of that subclause.

10B Expiry of trial period for work and development orders

For the purposes of section 99J (2) of the Act, an application for a work and development order cannot be made after the day that is the second anniversary of the commencement of Subdivision 1 of Division 8 of Part 4 of the Act.

2.3, 2.4

(Repealed)