



New South Wales

# Fines Further Amendment Bill 2008

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Fines Act 1996* (the ***Principal Act***) as follows:

- (a) to permit persons in receipt of certain Government benefits to elect to pay fines in regular instalments from those benefits,
- (b) to provide for the giving of official cautions in certain circumstances as an alternative to issuing a penalty notice,
- (c) to provide for an internal review of a decision to issue a penalty notice in certain circumstances,
- (d) to provide for a review of a decision to issue a penalty notice before a penalty notice enforcement order is annulled in certain circumstances if no internal review of the decision has taken place,
- (e) to provide for the trial of a scheme to allow persons belonging to certain vulnerable groups to mitigate a fine by undertaking activities under a work and development order,
- (f) to extend the power to write off fines to enable fines to be partially written off.

This Bill also amends:

- (a) the *Crimes (Administration of Sentences) Act 1999* to permit information obtained in the administration of that Act to be disclosed to the State Debt Recovery Office, and
- (b) the *Fines Regulation 2005* to provide for the waiver, postponement or refund of costs and fees, to provide that an internal review of a decision to issue a penalty notice is not required if the penalty notice was issued by a police officer and to provide for a trial period for work and development orders and the maximum number of such orders that may be made during that period, and
- (c) the *Road Transport (Driver Licensing) Act 1998* and regulations under that Act to create separate offences in relation to suspended or cancelled driver licences where the suspension or cancellation occurs under the Principal Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation except for a number of provisions that are specified to commence on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to each Act and Regulation set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced.

## Schedule 1 Amendment of Fines Act 1996

**Schedule 1 [1]** inserts a number of definitions into the Principal Act consequential on other amendments to that Act made by the proposed Act.

**Schedule 1 [3] and [4]** permit the registrar of a court that has imposed a fine on a person to refer the matter to the State Debt Recovery Office for the making of a court fine enforcement order if the person is applying for a work and development order in respect of the amount owing under the fine or the person is in receipt of a Government benefit and is applying for an order under section 100 (Time to pay) of the Principal Act in respect of the amount. The State Debt Recovery Office may make a court fine enforcement order in respect of such a person but only if it determines to make the work and development order or order under section 100 of the Principal Act that is sought by the person. If the State Debt Recovery Office does not make the court fine enforcement order it is to refer the matter back to the registrar.

**Schedule 1 [14]** permits the State Debt Recovery Office to make a penalty notice enforcement order if it receives, in respect of an amount owed by a person under a penalty notice, an application for a work and development order in respect of the

amount or, if the person is in receipt of a Government benefit, an application for an order under section 100 (Time to pay) of the Principal Act. The State Debt Recovery Office may make a penalty notice enforcement order in respect of such a person but only if it determines to make the work and development order or order under section 100 of the Principal Act that is sought by the person. If a penalty notice enforcement order is made in these circumstances, the person subject to the order can no longer elect to have the matter dealt with by a court in accordance with section 23A of the Principal Act and the decision to issue the penalty notice can no longer be the subject of an internal review. **Schedule 1 [17] and [23]** make consequential amendments. **Schedule 1 [24]** permits the State Debt Recovery Office to allow a person in receipt of a Government benefit to pay the fine in instalments as a regular direct debit from that benefit.

**Schedule 1 [8]** provides that an appropriate officer may give a person an official caution rather than issue a penalty notice if the officer believes on reasonable grounds that the person has committed an offence in relation to which a penalty notice may be issued and it is appropriate to give an official caution in the circumstances. The giving of an official caution does not preclude other action in relation to the offence. **Schedule 1 [5] and [6]** make consequential amendments.

**Schedule 1 [9]** provides that a notice is a penalty notice for the purposes of the Principal Act if it is issued under a statutory provision that declares the notice to be a penalty notice for the purposes of that Act or, if at the time the notice was issued, it was issued under such a provision.

**Schedule 1 [10]** provides that a person may apply for an internal review of a decision to issue a penalty notice. The application is to be made to the issuing agency in respect of the penalty notice (being the agency in or by which the appropriate officer who issued the penalty notice is employed or engaged) or to the State Debt Recovery Office. An agency that receives an application is not required to conduct an internal review if the agency notifies the applicant in writing, within 10 days of receiving the application, that it has decided not to conduct an internal review and gives reasons for its decision. An internal review is also not required in prescribed circumstances or if an internal review has already been conducted. If a review is to be conducted, it is to be conducted by a person who was not involved in making the decision that is the subject of the review. When reviewing a decision, a reviewing agency may request additional information from the applicant. Following a review the reviewing agency may confirm the decision to issue a penalty notice or may withdraw the penalty notice. It must withdraw a penalty notice if any of the following grounds are 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,

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- (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,
  - (f) any other ground prescribed by the regulations.

A reviewing agency may, at its discretion, also decide to withdraw a penalty notice on any other ground. 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. If a penalty notice is withdrawn, any penalty reminder notice is taken to be withdrawn and any amount paid under the notice is to be refunded. Also, any action taken by the Roads and Traffic Authority to record demerit points against the person, because of that payment, is to be reversed. When withdrawing a penalty notice, a reviewing agency may give an official caution in its place. The proposed amendments do not prevent an agency from conducting a review of a decision to issue a penalty notice, or to withdraw a penalty notice, on its own motion. If a reviewing agency withdraws a penalty notice on its own motion after the amount under the penalty notice has been paid, no person is liable to any further proceedings for the alleged offence. **Schedule 1 [7], [11]–[13], [15] and [16]** make consequential amendments.

**Schedule 1 [19]** provides that the State Debt Recovery Office, when proposing to annul a penalty notice enforcement order, is to seek a review of the decision to issue each penalty notice to which the penalty notice enforcement order applies if it has reason to suspect that the penalty notice should be withdrawn and no review of the decision to issue the penalty notice has been conducted. The review is to be conducted by the issuing agency. **Schedule 1 [18]** makes a consequential amendment.

**Schedule 1 [20]** permits the regulations to prescribe an amount to be taken to be part of a fine for the purposes of Part 4 (Fine enforcement action) of the Principal Act.

**Schedule 1 [22]** provides for the making of work and development orders. A work and development order is an order requiring a person to do any one or more of the following in order to satisfy a fine 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.

An application for an order may be made to the State Debt Recovery Office by or on behalf of a person who owes an amount under a fine and who has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship. The application must be supported by at least one approved person who will supervise the carrying out of the activities under the order. An approved person is a person or body approved by the Director-General of the Attorney General's Department or a medical practitioner, psychologist or nurse. 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. No fine enforcement action is to be taken against a person while a work and development order is in force. The regulations may set a cap on the number of orders that may be made in a particular period. The State Debt Recovery Office may vary or revoke an order on the application of the person subject to the order, or on its own initiative if it is satisfied that the person has failed to comply with the order. The fine, or part of a fine, to which a work and development order relates is taken to be satisfied if the person complies with the order.

If a work and development order requires unpaid work to be carried out, the person performing the work, any person for whose benefit that work is performed, any person who directs or supervises the work and any person who owns or occupies the premises or land on which that work is performed are protected from civil liability in relation to that work. A person undertaking unpaid work under a work and development order is not considered to be employed by, or in a contract of services with, the Crown or any other person. The State Debt Recovery Office, when exercising its functions with respect to work and development orders, is to have regard to guidelines issued by the Attorney General in consultation with the Treasurer. **Schedule 1 [21], [29], [32] and [33]** make consequential amendments.

**Schedule 1 [25], [27] and [28]** extend the State Debt Recovery Office's power to write off an unpaid fine so that it may now write off only part of an unpaid fine.

**Schedule 1 [30] and [31]** permit the Hardship Review Board to review decisions of the State Debt Recovery Office with respect to work and development orders, orders under section 100 (Time to pay) of the Principal Act and the writing off of unpaid fines. On review, the Hardship Review Board may direct the State Debt Recovery Office to make, revoke or vary a work and development order or order under section 100 or to write off, in whole or in part, an unpaid fine.

**Schedule 1 [34] and [35]** permit the regulations to provide for the waiver, postponement or refund of any costs or fees payable under the Principal Act and to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [36]** inserts a number of savings and transitional provisions into the Principal Act. These provide that internal reviews, work and development orders and the partial write-off of fines extend to penalty notices issued and amounts owing before the commencement of the amendments made by the proposed Act.

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Schedule 1 [2] and [26] make amendments in the nature of statute law revision.

## **Schedule 2      Amendment of other Acts and Regulations**

### **Crimes (Administration of Sentences) Act 1999 No 93**

**Schedule 2.1** amends the *Crimes (Administration of Sentences) Act 1999* to permit information obtained in the administration of that Act to be disclosed to the State Debt Recovery Office in connection with the administration or execution of the *Fines Act 1996*.

### **Fines Regulation 2005**

**Schedule 2.2 [4]** provides that no fee is payable for the making of a court fine enforcement order or penalty notice enforcement order under section 14 (1A) or 42 (1AA) of the *Fines Act 1996*.

**Schedule 2.2 [6]** provides the State Debt Recovery Office with the power to waive, postpone or refund enforcement fees or application fees for the annulment of penalty notice enforcement orders. **Schedule 2.2 [5]** makes a consequential amendment.

**Schedule 2.2 [8]** provides that an application fee that is postponed in relation to a penalty notice enforcement order is prescribed as a fine unless the order is annulled and the fee is payable as part of the fine to which the order relates.

**Schedule 2.2 [9]** provides for a 2 year trial period for work and development orders and provides that the maximum number of orders that may be made during that period is 2,000.

**Schedule 2.2 [1]–[3] and [7]** make amendments in the nature of statute law revision.

### **Road Transport (Driver Licensing) Act 1998 No 99**

Section 25A of the *Road Transport (Driver Licensing) Act 1998* contains a number of offences in relation to a person driving a motor vehicle or applying for a driver licence while the person's driver licence is cancelled or suspended. The provisions do not make any distinction as to whether the person's driver licence was cancelled or suspended under the *Fines Act 1996* or otherwise, such as in relation to a traffic offence. Under the *Road Transport (General) Act 2005*, an offence under section 25A of the *Road Transport (Driver Licensing) Act 1998* is a relevant offence for the purpose of declaring a person to be an habitual traffic offender. A person is declared to be an habitual traffic offender if a court in this State convicts the person of a relevant offence and the person has, in the period of 5 years before the conviction, also been convicted of at least 2 other relevant offences committed on different occasions. Such a declaration leads to a person being disqualified from holding a driver licence for a period of 5 years or such longer period as the court may impose.

**Schedule 2.3 [3]** amends section 25A of the *Road Transport (Driver Licensing) Act 1998* to create new offences that mirror the existing offences. The new offences apply in circumstances where a person's driver licence is cancelled or suspended

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under section 66 of the *Fines Act 1996* and the existing offences continue to apply in all other cases. The new offences are not relevant offences for the purposes of declaring a person to be an habitual traffic offender. The penalties are the same for the new offences. However, **Schedule 2.3 [7]** provides for a relevant disqualification period of 3 months for a first offence under the new offences, rather than 12 months as is currently the case. The relevant disqualification period for a second or subsequent offence remains the same (2 years). **Schedule 2.3 [1], [2] and [4]–[6]** make consequential amendments.

**Schedule 2.3 [8]** permits the regulations to contain provisions of a savings and transitional nature consequent on the enactment of the proposed Act.

**Schedule 2.3 [9]** inserts a savings and transitional provision into the *Road Transport (Driver Licensing) Act 1998* that provides that the amendments made to section 25A by the proposed Act do not apply to or in respect of an offence alleged to have been committed before the commencement of those amendments.

#### **Road Transport (Driver Licensing) Regulation 2008**

**Schedule 2.4** amends the *Road Transport (Driver Licensing) Regulation 2008* consequential on the amendments made by Schedule 2.3 to the proposed Act.