



New South Wales

# Fines Amendment (Work and Development Orders) Bill 2011

## Explanatory note

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

## Overview of Bill

The *Fines Act 1996* enables the State Debt Recovery Office to make a work and development order to enable a fine defaulter who has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship to satisfy the fine concerned by undertaking certain activities specified in the order (for example, unpaid work, medical treatment or counselling).

The object of this Bill is to amend the *Fines Act 1996*:

- (a) to extend the categories of persons who are eligible to be the subject of a work and development order to persons who have a serious addiction to drugs, alcohol or volatile substances, and
- (b) to enable the State Debt Recovery Office to rely on the assessment of an approved organisation or a health practitioner as to whether a person meets certain eligibility criteria for a work and development order, and
- (c) to facilitate the appropriate administration of work and development orders.

## 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.

## **Schedule 1      Amendment of Fines Act 1996 No 99**

### **Expansion of eligibility criteria for work and development orders**

**Schedule 1 [4]** amends section 99B of the Act to enable a work and development order to be made in relation to a fine defaulter who has a serious addiction to drugs, alcohol or volatile substances. **Schedule 1 [6]** amends that section to provide that, if an order is made in relation to such a fine defaulter, the only activities that may be carried out under the order are counselling and drug or alcohol treatment unless the fine defaulter also satisfies another of the existing criteria for the making of an order (such as, for example, having a mental illness).

### **Assessment of eligibility for work and development orders**

**Schedule 1 [5]** amends section 99B of the Act to remove the requirement that an application for a work and development order always be accompanied by supporting evidence.

**Schedule 1 [7]** inserts section 99BA into the Act to require the State Debt Recovery Office, when determining an application for the making of a work and development order in relation to a particular fine defaulter, to rely on an assessment (if provided by an approved person supporting the application) that the fine defaulter meets certain criteria for eligibility. Those criteria are that the fine defaulter has a mental illness, has an intellectual disability or cognitive impairment, is homeless or is experiencing acute economic hardship or has a serious addiction to drugs, alcohol or volatile substances. The State Debt Recovery Office need not rely on such an assessment if it has information that gives it reason to believe that it should not.

The proposed section requires an approved person supporting an application for a work and development order or making an assessment of eligibility for an order to keep supporting evidence and enables the State Debt Recovery Office to require the production of that evidence. The proposed section also enables the State Debt Recovery Office to waive a requirement that an application for a work and development order or an assessment of eligibility for such an order be supported by a particular type of evidence.

**Schedule 1 [1] and [2]** make consequential amendments.

### **Miscellaneous**

**Schedule 1 [8]** amends section 99C of the Act to enable the State Debt Recovery Office to vary or revoke a work and development order if it is of the opinion that false or misleading information has been given in connection with the application for the order or a report of an approved person in relation to the order or the person subject to the order does not meet, or no longer meets, the eligibility criteria specified in the application for the order as a ground for the making of the order. An order may also

be varied or revoked if the State Debt Recovery Office is of the opinion that an approved person in relation to the order cannot continue to supervise the activities under the order, or has breached the person's obligations under the Act as an approved person, or that the person supervising the activities under the order is no longer an approved person.

**Schedule 1 [9]** substitutes section 99I of the Act which deals with the issuing of guidelines in relation to work and development orders by the Attorney General in consultation with the Treasurer. Instead, the Minister administering the *Crimes (Sentencing Procedure) Act 1999* (currently, the Attorney General), in consultation with the Minister administering the State Debt Recovery Office, will be able to issue guidelines that are published on the NSW legislation website with respect to work and development orders. The State Debt Recovery Office, approved persons supporting applications for work and development orders and other persons exercising functions under the relevant provisions of the Act are required to comply with the guidelines. **Schedule 1 [3]** makes a consequential amendment.

**Schedule 1 [10]** amends section 99J of the Act to remove the regulation-making power that currently enables the regulations to limit the period for which the work and development orders scheme is to operate. The *Fines Regulation 2010* was amended on 8 July 2011 to remove the clause that provided for that scheme to expire on 10 July 2011.

**Schedule 1 [11]** amends the Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.



First print



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New South Wales

# **Fines Amendment (Work and Development Orders) Bill 2011**

No. , 2011

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## **A Bill for**

An Act to amend the *Fines Act 1996* to make further provision with respect to work and development orders.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Fines Amendment (Work and Development Orders) Act 2011</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6



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<b>Schedule 1</b>	<b>Amendment of Fines Act 1996 No 99</b>	1
<b>[1]</b>	<b>Section 99A Definitions</b>	2
	Insert “for the time being” after “person or body approved” in the definition of <i>approved organisation</i> .	3 4
<b>[2]</b>	<b>Section 99A, definition of “approved person”</b>	5
	Insert “and enrolled for the time being in accordance with the guidelines” after “that treatment” in paragraph (b) of the definition.	6 7
<b>[3]</b>	<b>Section 99A, definition of “guidelines”</b>	8
	Insert in alphabetical order:	9
	<i>guidelines</i> means guidelines issued under section 99I.	10
<b>[4]</b>	<b>Section 99B Making an order</b>	11
	Omit section 99B (1) (b). Insert instead:	12
	(b) the person:	13
	(i) has a mental illness, or	14
	(ii) has an intellectual disability or cognitive impairment, or	15 16
	(iii) is homeless, or	17
	(iv) is experiencing acute economic hardship, or	18
	(v) has a serious addiction to drugs, alcohol or volatile substances, and	19 20
<b>[5]</b>	<b>Section 99B (2) (c)</b>	21
	Omit “(including supporting evidence)”.	22
<b>[6]</b>	<b>Section 99B (2A)</b>	23
	Insert after section 99B (2):	24
	(2A) If the application for the order is in relation to a person who has a serious addiction to drugs, alcohol or volatile substances but does not satisfy any of the other criteria referred to in subsection (1) (b), the only activities that the person may be required to carry out under the order are counselling and drug or alcohol treatment.	25 26 27 28 29 30

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<b>[7] Section 99BA</b>	1
Insert after section 99B:	2
<b>99BA Assessments of eligibility for orders and keeping of records</b>	3
(1) An application for a work and development order may include an assessment by the approved person or persons supporting the application as to whether the person for whom the order is sought meets any of the criteria specified in section 99B (1) (b).	4 5 6 7
(2) If such an assessment is included in the application, the State Debt Recovery Office is to rely on that assessment when deciding whether to make the work and development order unless it has information that gives it reason to believe that it should not rely on the assessment.	8 9 10 11 12
(3) If an approved person supports an application for a work and development order or includes in such an application an assessment of eligibility for the order, the approved person is to keep records of the supporting evidence for the application or the assessment of eligibility in accordance with the guidelines.	13 14 15 16 17
(4) The State Debt Recovery Office may, at any time, require the approved person or persons who supported the application or made the assessment to provide all or specified types of that supporting evidence.	18 19 20 21
(5) Despite section 99I, the State Debt Recovery Office may waive a requirement that an application for a work and development order or an assessment of eligibility for a work and development order be supported by a particular type of evidence if it considers the circumstances of the case warrant it.	22 23 24 25 26
<b>[8] Section 99C Variation or revocation of order</b>	27
Insert at the end of section 99C (1) (b):	28
, or	29
(c) if it is of the opinion that information provided in, or in connection with, the application for the order is false or misleading in a material particular, or	30 31 32
(d) if it is of the opinion that information provided in, or in connection with, a report provided to the State Debt Recovery Office by an approved person who is supervising the person subject to the order is false or misleading in a material particular, or	33 34 35 36 37

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(e)	if it is of the opinion that the person subject to the order does not meet, or no longer meets, any of the criteria referred to in section 99B (1) (b) specified in the application for the order as a ground for the making of the order, or	1 2 3 4 5
(f)	if it is of the opinion that an approved person who is supervising compliance with the order is unable to continue with that supervision or is in breach of any of the approved person's obligations under this Subdivision, or	6 7 8 9
(g)	if it is of the opinion that the person who is supervising compliance with the order is no longer an approved person.	10 11
<b>[9] Section 99I</b>		12
	Omit the section. Insert instead:	13
<b>99I Work and development guidelines</b>		14
(1)	The Minister administering the <i>Crimes (Sentencing Procedure) Act 1999</i> may issue guidelines (not inconsistent with this Act or the regulations under this Act) for or with respect to work and development orders.	15 16 17 18
(2)	Without limiting subsection (1), the guidelines may make provision for or with respect to the following matters:	19 20
(a)	determining the eligibility of a person for a work and development order,	21 22
(b)	the supporting evidence required in relation to any aspect of eligibility for a work and development order,	23 24
(c)	the keeping of any such supporting evidence and any other documentation in relation to the carrying out of activities under work and development orders,	25 26 27
(d)	the value of the activities that are to be undertaken under a work and development order for the purposes of satisfying the fine to which the order relates,	28 29 30
(e)	the manner of making an application for a work and development order,	31 32
(f)	the requirements for obtaining approval as an approved organisation,	33 34
(g)	the enrolment of health practitioners as approved persons,	35
(h)	the revocation of the approval of approved organisations or enrolment of health practitioners as approved persons,	36 37

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Schedule 1 Amendment of Fines Act 1996 No 99

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(i)	the conditions to be complied with and the requirements to be met by approved persons, including (but not limited to) requirements for the auditing of documentation required to be kept by approved persons and for the furnishing of reports on the carrying out of activities under work and development orders.	1 2 3 4 5 6
(3)	The State Debt Recovery Office, approved persons and other persons exercising functions under this Subdivision are required to comply with the guidelines. However, a failure to comply with a guideline does not affect the validity of any proceedings, decision, order or warrant.	7 8 9 10 11
(4)	Nothing in subsection (3) prevents action being taken under this Subdivision to revoke a work and development order or the approval of an approved organisation or enrolment of a health practitioner as an approved person.	12 13 14 15
(5)	The guidelines are to be prepared in consultation with the Minister administering Part 8 (State Debt Recovery Office).	16 17
(6)	The guidelines:	18
(a)	may be amended or replaced, and	19
(b)	are to be published on the NSW legislation website.	20
<b>[10]</b>	<b>Section 99J Regulations</b>	21
	Omit section 99J (2).	22
<b>[11]</b>	<b>Schedule 3 Savings, transitional and other provisions</b>	23
	Insert at the end of clause 1 (1):	24
	<i>Fines Amendment (Work and Development Orders) Act 2011</i>	25