



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,

- (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.

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.



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No. , 2008

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fines Further Amendment Act 2008</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(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.	7 8 9 10
3 Amendment of Fines Act 1996 No 99	11
The <i>Fines Act 1996</i> is amended as set out in Schedule 1.	12
4 Amendment of other Acts and Regulations	13
Each Act and Regulation specified in Schedule 2 is amended as set out in that Schedule.	14 15
5 Repeal of Act	16
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	17 18
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	19 20

Schedule 1	Amendment of Fines Act 1996	1
	(Section 3)	2
[1] Section 3 Definitions		3
Insert in alphabetical order in section 3 (1):		4
<i>issuing agency</i> , in relation to a penalty notice or official caution,		5
means the agency in or by which the appropriate officer who		6
issued the penalty notice or gave the caution is employed or		7
engaged.		8
<i>penalty notice offence</i> —see section 19A.		9
<i>person in receipt of a Government benefit</i> means:		10
(a) a person in receipt of a pension or other benefit paid by the		11
Commonwealth being a pension or benefit of a kind		12
approved by the State Debt Recovery Office, or		13
(b) a person belonging to a class of persons prescribed by the		14
regulations.		15
<i>reviewing agency</i> , in relation to a penalty notice, means the State		16
Debt Recovery Office or the issuing agency.		17
<i>work and development order</i> —see section 99A.		18
[2] Section 4 Meaning of “fine”		19
Omit section 4 (2). Insert instead:		20
(2) However, a <i>fine</i> does not include any amount of a kind excluded		21
by the regulations.		22
[3] Section 13 Referral for a court fine enforcement order		23
Omit “if the fine has not been paid by the due date.” from section 13 (1).		24
Insert instead:		25
if:		26
(a) the fine has not been paid by the due date, or		27
(b) the person is in receipt of a Government benefit and is		28
seeking an order under section 100 (Time to pay) in		29
relation to the fine, or		30
(c) the person is seeking a work and development order in		31
relation to the fine.		32

[4] Section 14 When an order may be made	1
Insert after section 14 (1):	2
(1A) Despite subsection (1), a court fine enforcement order may also be made if a court has imposed a fine on a person and:	3
(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	4
(b) the person is seeking a work and development order in relation to the fine.	5
(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.	6
(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.	7
[5] Section 19 Summary of penalty notice procedure	8
Insert after section 19 (1) (a):	9
(a1) Determine whether to give official caution rather than penalty notice	10
The appropriate officer determines whether to issue a penalty notice or whether an official caution would be more appropriate (see Division 1A).	11
[6] Section 19 (1) (b)	12
Omit “A penalty”.	13
Insert instead “If it is determined that it is not appropriate to give an official caution, a penalty”.	14
[7] Section 19 (1) (b1)	15
Insert after section 19 (1) (b):	16
(b1) Internal review	17
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).	18

[8] Part 3, Division 1A	1
Insert after Division 1:	2
Division 1A Official cautions	3
19A Appropriate officer may give official caution	4
(1) An appropriate officer may give a person an official caution instead of issuing a penalty notice if the appropriate officer believes:	5
(a) on reasonable grounds that the person has committed an offence under a statutory provision for which a penalty notice may be issued (a <i>penalty notice offence</i>), and	6
(b) that it is appropriate to give an official caution in the circumstances.	7
(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.	8
(3) In this section:	9
<i>guidelines</i> means guidelines:	10
(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	11
(b) issued by the relevant issuing agency that are consistent with the guidelines issued by the Attorney General.	12
19B Official caution does not affect other powers	13
An official caution in relation to a penalty notice offence does not affect the power of an appropriate officer or issuing agency to:	14
(a) commence proceedings against the person to whom the official caution was given, or	15
(b) issue a penalty notice in relation to the offence, or	16
(c) take no further action, or	17
(d) take any other specified action permitted under this Act or the Act that establishes the penalty notice offence.	18

[9] Section 20 What is a penalty notice?	1
Omit section 20 (2) (c). Insert instead:	2
(c) a notice issued under a statutory provision that declares the notice to be a penalty notice for the purposes of this Act, or	3 4
(d) a notice that, at the time it was issued, was issued under a statutory provision referred to in paragraph (a), (b) or (c).	5 6
[10] Part 3, Division 2A	7
Insert after Division 2:	8
Division 2A Internal review	9
24A Application for review of penalty notice	10
(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.	11 12 13
(2) An application for a review:	14
(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	15 16 17 18
(b) is to include the mailing address of the applicant and the grounds on which the review is sought (including supporting evidence).	19 20 21
(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.	22 23 24 25
(4) The regulations may make provision for or with respect to applications under this section.	26 27
24B Circumstances when agency is not required to conduct a review	28
(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:	29 30 31 32
(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,	33 34 35 36

(b)	a review of the decision has already been conducted under this Division,	1 2
(c)	such other circumstances as may be prescribed by the regulations.	3 4
(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.	5 6 7
24C	Review by reviewing agency	8
(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.	9 10 11
(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.	12 13 14
24D	Request for additional information	15
(1)	When conducting a review under this Division, a reviewing agency may request, in writing, additional information from the applicant.	16 17 18
(2)	The additional information must be provided by the applicant to the reviewing agency within 14 days of the request.	19 20
(3)	If the information is not provided within the time specified, the review may be conducted without that information.	21 22
24E	Outcome of review	23
(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.	24 25 26
(2)	A reviewing agency must withdraw a penalty notice if it finds any of the following grounds to be made out:	27 28
(a)	the penalty notice was issued contrary to law,	29
(b)	the issue of the penalty notice involved a mistake of identity,	30 31
(c)	the penalty notice should not have been issued, having regard to the exceptional circumstances relating to the offence,	32 33 34

(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:	1 2 3
(i)	to understand that the person’s conduct constituted an offence, or	4 5
(ii)	to control such conduct,	6
(e)	an official caution should have been given instead of a penalty notice, having regard to the relevant guidelines under section 19A,	7 8 9
(f)	any other ground prescribed by the regulations.	10
(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).	11 12 13
(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.	14 15 16 17
24F	Action to be taken if decision to issue penalty notice is confirmed	18
(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.	19 20 21 22
(2)	A penalty reminder notice served under subsection (1) replaces any previous penalty reminder notice in respect of the offence.	23 24
(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.	25 26 27 28
24G	Effect of withdrawal of penalty notice	29
(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.	30 31 32 33
(2)	If a penalty notice is withdrawn:	34
(a)	any penalty reminder notice, in respect of the offence to which the penalty notice relates, is also taken to be withdrawn, and	35 36 37

(b)	if all or part of the amount under the penalty notice or penalty reminder notice has been paid:	1
(i)	any action taken to record demerit points against a person in the demerit points register kept under the <i>Road Transport (Driver Licensing) Act 1998</i> because of that payment is to be reversed by the Roads and Traffic Authority, and	2
(ii)	the amount that has been paid is repayable to the person to whom the penalty notice was directed.	3
24H	Agency may review a decision on its own motion	4
(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.	5
(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.	6
24I	Review terminated if matter dealt with by court	7
	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.	8
24J	Reviewing agencies may enter into arrangements with respect to functions under Division	9
	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.	10
[11]	Section 27 What a penalty reminder notice must say	11
	Insert after section 27 (1) (a):	12
(a1)	of the steps to be taken for seeking a review of the decision to issue the penalty notice, and	13
[12]	Section 42 When a penalty notice enforcement order may be made	14
	Insert after section 42 (1) (a):	15
(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	16

[13] Section 42 (1) (b)	1
Omit the paragraph. Insert instead:	2
(b) a penalty reminder notice has been served on the person:	3
(i) after the end of the time specified in the penalty	4
notice as the time within which the amount payable	5
under the notice may be paid, or	6
(ii) if a review has been conducted under Division 2A,	7
after that review, and	8
[14] Section 42 (1AA)–(1CC)	9
Insert after section 42 (1):	10
(1AA) Despite subsection (1), the State Debt Recovery Office may also	11
make a penalty notice enforcement order if it receives, in respect	12
of an amount owed by a person under a penalty notice, an	13
application by the person:	14
(a) for an order under section 100 (Time to pay) in relation to	15
the amount and the person is in receipt of a Government	16
benefit, or	17
(b) for a work and development order in relation to the	18
amount.	19
(1BB) The State Debt Recovery Office is not to make a penalty notice	20
enforcement order under subsection (1AA) unless it determines	21
to make the order under section 100, or the work and	22
development order, sought by the person.	23
(1CC) On the making of an order under subsection (1AA):	24
(a) the person who has been served with the penalty notice to	25
which the order relates can no longer elect to have the	26
matter dealt with by a court in accordance with section	27
23A, and	28
(b) the decision to issue the penalty notice can no longer be	29
reviewed under Division 2A.	30
[15] Section 42 (1A) (c)	31
Insert at the end of section 42 (1A) (b):	32
, or	33
(c) if a review has been conducted under Division 2A and a	34
penalty reminder notice has been served under section	35
24F (1)—42 days after service of that notice.	36

[16] Section 42 (1B)	1
Insert after section 42 (1A):	2
(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.	3 4 5
[17] Section 42 (2) (a)	6
Insert “, or the relevant matters in subsection (1AA),” after “(1) (d)”.	7
[18] Section 46 Withdrawal of order	8
Insert at the end of section 46 (2):	9
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.	10 11 12
[19] Section 49A	13
Omit the section. Insert instead:	14
49A Review of penalty notice before annulment	15
(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:	16 17 18 19
(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	20 21 22
(b) a review of the decision to issue the penalty notice has not been conducted under this section or Division 2A.	23 24
(2) A review is to be conducted by the relevant issuing agency.	25
(3) A review is to be dealt with in the absence of the parties, unless the issuing agency otherwise determines.	26 27
(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.	28 29 30
(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.	31 32 33 34
(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	35 36

42 days after referral for review, grant the application for annulment and annul the penalty notice enforcement order under section 49.	1 2 3
(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.	4 5 6 7
[20] Section 57 Application and interpretation	8
Insert “and any other amount of a kind prescribed by the regulations” after “order” in section 57 (4).	9 10
[21] Section 58 Summary of enforcement procedure	11
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).	12 13 14
[22] Part 4, Division 8	15
Omit the heading to Division 8. Insert instead:	16
Division 8 Fine mitigation	17
Subdivision 1 Work and development orders	18
99A Definitions	19
In this Subdivision:	20
<i>approved organisation</i> means a person or body approved by the Director-General of the Attorney General’s Department.	21 22
<i>approved person</i> , in relation to a work and development order, means:	23 24
(a) an approved organisation, or	25
(b) if the work and development order involves medical or mental health treatment, a health practitioner qualified to provide that treatment.	26 27 28
<i>health practitioner</i> means:	29
(a) a registered medical practitioner, or	30
(b) a registered psychologist, or	31
(c) a nurse within the meaning of the <i>Nurses and Midwives Act 1991</i> .	32 33

<i>work and development order</i> 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:	1
	2
	3
(a) undertake unpaid work for, or on behalf of, an approved organisation (but only with the agreement of that organisation),	4
	5
	6
(b) undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,	7
	8
(c) undertake an educational, vocational or life skills course,	9
(d) undergo financial or other counselling,	10
(e) undergo drug or alcohol treatment,	11
(f) if the person is under 25 years of age, undertake a mentoring program.	12
	13
99B Making an order	14
(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:	15
	16
	17
(a) a fine enforcement order has been made with respect to the person in relation to the fine, and	18
	19
(b) the person has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship, and	20
	21
	22
(c) a community service order is not in force against the fine defaulter in respect of the fine, and	23
	24
(d) an application is made in accordance with this Subdivision.	25
	26
(2) An application for an order is to:	27
(a) be made to the State Debt Recovery Office by or on behalf of the person, and	28
	29
(b) be supported by each approved person who is to supervise the person in complying with the order, and	30
	31
(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.	32
	33
	34
	35
(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.	36
	37

(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)).	1 2 3 4 5 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.	7 8 9
(6)	An order is to specify:	10
(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	11 12 13
(b)	the nature of any unpaid work that may be required under the order.	14 15
(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.	16 17 18
99C	Variation or revocation of order	19
(1)	The State Debt Recovery Office may vary or revoke a work and development order:	20 21
(a)	if requested to do so by or on behalf of the person subject to the order, or	22 23
(b)	if it is satisfied that the person subject to the order has failed, without reasonable excuse, to comply with the order.	24 25 26
(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.	27 28 29 30
(3)	An order ceases to be in force when it is revoked.	31
99D	No appeal except to Hardship Review Board	32
	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.	33 34 35

99E	Satisfaction of order	1
(1)	If a person subject to a work and development order:	2
(a)	complies with the order, the fine, or the part of the fine, to which the order relates is taken to be satisfied, or	3 4
(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.	5 6 7
(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.	8 9 10 11 12
99F	Civil liability	13
(1)	In this section:	14
	<i>person involved</i> , in relation to unpaid work under a work and development order, includes any person (including a corporation):	15 16 17
(a)	for whose benefit that work is performed, or	18
(b)	who directs or supervises that work, specifies its terms or conditions or controls it, or	19 20
(c)	who owns or occupies the premises or land on which that work is performed,	21 22
	but does not include the person by whom the work is performed.	23
(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.	24 25 26 27
(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.	28 29 30 31 32
(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.	33 34
(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.	35 36 37 38 39

(6)	Subsections (3) and (4) do not apply to an act or omission if:	1
(a)	the work concerned was not work specified in the work and development order, or	2 3
(b)	the act or omission concerned was, or was a necessary part of, an act or omission intended to cause injury, loss or damage.	4 5 6
(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:	7 8 9
(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	10 11 12 13
(b)	any substantial change in that condition.	14
(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.	15 16 17
99G	Persons performing work under orders not workers	18
	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:	19 20 21 22
(a)	a worker for the purposes of the <i>Workers Compensation Act 1987</i> , the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , the <i>Annual Holidays Act 1944</i> or the <i>Long Service Leave Act 1955</i> , or	23 24 25 26
(b)	an employee (however described) for the purposes of the <i>Industrial Relations Act 1996</i> or any other Act or law.	27 28
99H	Delegation by approved persons	29
	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.	30 31 32 33
99I	Guidelines	34
	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.	35 36 37 38 39

99J Regulations	1
(1) The regulations may make provision for or with respect to work and development orders.	2 3
(2) Without limiting subsection (1), the regulations may prescribe a date after which applications for work and development orders can no longer be made.	4 5 6
Subdivision 2 Time to pay and writing off fines	7
[23] Section 100 Time to pay	8
Insert after section 100 (1):	9
(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.	10 11 12
[24] Section 100 (3A)	13
Insert after section 100 (3):	14
(3A) In particular, the State Debt Recovery Office may allow a person in receipt of a Government benefit to pay the fine in instalments, as a regular direct debit from that benefit, if:	15 16 17
(a) it is satisfied that adequate arrangements are in place for such a regular payment to be made, and	18 19
(b) it agrees to the fine being paid in this manner.	20
[25] Section 101 Unpaid fines may be written off	21
Insert “, in whole or in part,” after “write off” wherever occurring in section 101 (1A) and (1B).	22 23
[26] Section 101 (2)	24
Omit “Any such guidelines”.	25
Insert instead “Guidelines issued under section 120”.	26
[27] Section 101 (3)	27
Omit “An unpaid”. Insert instead “Any part of an unpaid”.	28
[28] Section 101 (4)	29
Insert “any part of” after “subsection (3),”.	30

[29] Part 4, Division 8, Subdivision 3, heading	1
Insert before section 101A:	2
Subdivision 3 Hardship Review Board	3
[30] Section 101B Reviews by Hardship Review Board	4
Omit section 101B (1). Insert instead:	5
(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:	6
(a) the making of, the failure to make or the varying or revocation of, a work and development order,	7
(b) the making of, or the failure to make, an order under section 100,	8
(c) the writing off or the failure to write off, the whole or part of, an unpaid fine.	9
[31] Section 101B (6)	10
Omit the subsection. Insert instead:	11
(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:	12
(a) make, revoke or vary a work and development order,	13
(b) make, revoke or vary an order under section 100,	14
(c) write off, in whole or in part, an unpaid fine.	15
[32] Section 101B (7)	16
Omit “100 or section”. Insert instead “99B, 100 or”.	17
[33] Part 4, Division 9, heading	18
Insert after section 101C:	19
Division 9 Miscellaneous	20

[34] Section 128 Regulations	1
Insert after section 128 (2):	2
(3) The regulations may make provision for or with respect to the waiver, postponement or refund of any costs or fees payable under this Act.	3 4 5
[35] Schedule 3 Savings, transitional and other provisions	6
Insert at the end of clause 1 (1):	7
<i>Fines Further Amendment Act 2008</i>	8
[36] Schedule 3	9
Insert at the end of the Schedule with appropriate Part and clause numbering:	10
Part Provisions consequent on enactment of Fines Further Amendment Act 2008	11 12
Definition	13
In this Part:	14
<i>amending Act</i> means the <i>Fines Further Amendment Act 2008</i> .	15
Internal review	16
A person may apply for a review under Division 2A of Part 3 of a decision to issue a penalty notice in respect of a penalty notice issued before the commencement of that Division, if the application for review is made after that commencement and before the date for payment under any penalty reminder notice served on the person in respect of the offence to which the penalty notice relates.	17 18 19 20 21 22 23
Work and development orders	24
A person may apply for a work and development order under Subdivision 1 of Division 8 of Part 4 in respect of an amount owing before the commencement of that Subdivision.	25 26 27
Write off of fines	28
Sections 101 and 101B, as amended by the amending Act, extend to a fine imposed before the commencement of those amendments.	29 30 31

Schedule 2	Amendment of other Acts and Regulations	1
		2
	(Section 4)	3
2.1	Crimes (Administration of Sentences) Act 1999 No 93	4
	Section 257 Disclosure of information	5
	Insert after section 257 (1) (d):	6
	(d1) to the State Debt Recovery Office in connection with the	7
	administration or execution of the <i>Fines Act 1996</i>	8
	(including for the purpose of the imposition,	9
	administration or enforcement of a fine), or	10
2.2	Fines Regulation 2005	11
[1]	Whole regulation	12
	Omit all Part headings.	13
[2]	Clause 4 Enforcement costs under court fine enforcement orders: section 16	14
	Omit the clause.	15
[3]	Clause 5 Enforcement costs	16
	Omit “The following enforcement costs are payable under a penalty notice enforcement order” from clause 5 (1).	17
	Insert instead “For the purposes of sections 16 (1) and 44 (1) of the Act, the costs payable under a fine enforcement order are as follows”.	18
[4]	Clause 5 (1A)	19
	Insert after clause 5 (1):	20
	(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.	21
[5]	Clause 6 Applications for annulment of penalty notice enforcement orders: section 48	22
	Omit clause 6 (2).	23
		24
		25
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		27
		28

[6] Clause 6A	1
Insert after clause 6:	2
6A State Debt Recovery Office may waive, postpone or refund costs and fees	3
	4
The State Debt Recovery Office may, in such circumstances as it considers appropriate, waive, postpone or refund all or part of any enforcement costs payable under clause 5 or application fees payable under clause 6.	5
	6
	7
	8
[7] Clause 7 Applications to Local Court for redetermination of applications for annulment of penalty notice enforcement orders: section 50	9
	10
Omit “remit” from clause 7 (2). Insert instead “refund”.	11
[8] Clause 7A	12
Insert after clause 7:	13
7A Postponed application fee payable as part of fine	14
(1) For the purposes of section 57 (4) of the Act, an application fee that has been postponed under clause 6A or 7 in relation to a penalty notice enforcement order is prescribed as a fine unless the order is annulled.	15
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	18
(2) A fee referred to in subclause (1) is to be added to, and payable as part of, the fine to which the penalty notice enforcement order relates.	19
	20
	21
[9] Clauses 10A and 10B	22
Insert after clause 10:	23
10A Maximum number of work and development orders	24
(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.	25
	26
	27
	28
	29
(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.	30
	31
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10B Expiry of trial period for work and development orders	1
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 4 5
2.3 Road Transport (Driver Licensing) Act 1998 No 99	6
[1] Section 25A Offences committed by disqualified drivers or drivers whose licences are suspended or cancelled	7 8
Insert “(otherwise than under section 66 of the <i>Fines Act 1996</i>)” after “licence is suspended” in section 25A (2).	9 10
[2] Section 25A (3)	11
Insert “(otherwise than under section 66 of the <i>Fines Act 1996</i>)” after “licence is cancelled”.	12 13
[3] Section 25A (3A) and (3B)	14
Insert after section 25A (3):	15
(3A) A person whose driver licence is suspended or cancelled under section 66 of the <i>Fines Act 1996</i> must not:	16 17
(a) in the case of a suspended licence:	18
(i) drive on a road or road related area a motor vehicle of the class to which the suspended driver licence relates, or	19 20 21
(ii) make an application for a driver licence during the period of suspension for a motor vehicle of the class to which the suspended driver licence relates and in respect of such an application state his or her name falsely or incorrectly or omit to mention the suspension, or	22 23 24 25 26 27
(b) in the case of a cancelled licence:	28
(i) drive on a road or road related area a motor vehicle of the class to which the cancelled licence related without having subsequently obtained a driver licence for a motor vehicle of that class, or	29 30 31 32
(ii) make an application for a driver licence for a motor vehicle of the class to which the cancelled licence related and in respect of the application state his or	33 34 35

	her name falsely or incorrectly or omit to mention the cancellation.	1 2
	Maximum penalty: 30 penalty units or imprisonment for 18 months or both (in the case of a first offence) or 50 penalty units or imprisonment for 2 years or both (in the case of a second or subsequent offence).	3 4 5 6
(3B)	In determining any penalty or period of disqualification to be imposed on a person for an offence under subsection (3A), a court must take into account the effect the penalty or period of disqualification will have on the person’s employment and the person’s ability to pay the outstanding fine that caused the person’s driver licence to be suspended or cancelled.	7 8 9 10 11 12
[4]	Section 25A (4) Insert “or (3A) (b) (ii)” after “(3) (b)”.	13 14
[5]	Section 25A (5) Omit “and (3) (a)”. Insert instead “, (3) (a) and (3A) (a) (ii)”.	15 16
[6]	Section 25A (6) (a), (7) and (10) (b) Omit “(2) or (3) (a)” wherever occurring. Insert instead “(2), (3) (a) or (3A)”.	17 18
[7]	Section 25A (10) (a1) Insert after section 25A (10) (a): (a1) in the case of a first offence under subsection (3A)— 3 months, or	19 20 21 22
[8]	Schedule 3 Savings, transitional and other provisions Insert at the end of clause 1 (1): <i>Fines Further Amendment Act 2008</i> (to the extent that it amends this Act)	23 24 25 26
[9]	Schedule 3 Insert at the end of the Schedule with appropriate Part and clause numbering:	27 28
Part	Provisions consequent on enactment of Fines Further Amendment Act 2008	29 30
	Offences under section 25A The amendments made to section 25A by Schedule 2.3 to the <i>Fines Further Amendment Act 2008</i> do not apply to or in respect	31 32 33

Fines Further Amendment Bill 2008

Schedule 2 Amendment of other Acts and Regulations

of an offence committed or alleged to have been committed 1
before the commencement of those amendments and that section, 2
as in force immediately before those amendments were made, 3
continues to apply in respect of any such offence. 4

2.4 Road Transport (Driver Licensing) Regulation 2008 5

Section 102 Other exemptions from licensing 6

Omit “and (3) (a)” from clause 102 (2). Insert instead “, (3) (a) and (3A) 7
(a) (ii)”. 8