

The Shopfront

YOUTH LEGAL CENTRE

Fines – Step By Step

1 Introduction

This document provides a quick reference guide to dealing with fines. The available options and procedures depend on whether it is a court-imposed fine or a penalty notice, whether or not it been referred for enforcement, etc.

This document should be read in conjunction with our other material on fines and criminal law (available on our website at <http://www.theshopfront.org/24.html>).

It is important to get *legal advice*, especially if you are thinking of taking your fines to court, because there is a chance you could get a worse outcome in court.

2 Finding out about your outstanding fines

(a) **If your fines were imposed quite recently (in the last 2-3 months):**

Contact the relevant court (for court fines) or the State Debt Recovery Office (SDRO) (for penalty notice fines).

(b) **If your fines were imposed longer than 2-3 months ago:**

Contact the State Debt Recovery Office (SDRO).

Contact details are at the end of this document.

3 Acting for a client in relation to fines

(a) The State Debt Recovery Office (SDRO) generally requires an “**authority to act**” form before they will discuss anything with anyone other than the person named on the fine. Please see the attached links for these forms:

Authority to Act (for fines): http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_eo_009.pdf

(b) If your organisation often assists clients with outstanding fines, you may apply to the SDRO for an **Advocacy Hotline** number. This gives lawyers and community workers (not clients!) a direct line to the SDRO without having to go through the call centre and without always requiring a signed authority from the client. For details of how to apply, contact the SDRO.

4 If you want to challenge the fine

You might want to challenge a fine because you think you are not guilty or the amount of the fine is too high. How you go about this depends on whether it is a court fine or a penalty notice, and whether or not it has reached enforcement stage.

4.1 Penalty notice fines

(a) **If the fine is at penalty notice or penalty reminder notice stage** (up to seven weeks after the fine is issued):

(1) **If it is a parking offence or camera-detected traffic offence and you were not the driver** – you must complete a *statutory declaration* nominating the driver and send it to the **SDRO** within 28 days. The form can be found at:

http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_pn_024.pdf

(2) **For all other fines** – fill in the *court election* on the back of the penalty notice or reminder notice and send it to the **SDRO**. If you wish, you can also write a letter to the SDRO requesting them to withdraw the fine, but this is usually unsuccessful. If you have lost the court election form you can download one from:

http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_pn_020.pdf

After a few weeks, you will receive a *court attendance notice*. If you think you are not guilty and that the matter should be withdrawn, you may write *representations* to the prosecuting authority (Police, Railcorp etc). A lawyer can help with this. These representations are generally more likely to succeed than a letter to the SDRO.

(b) **If you wish to challenge the fine but it has already become an enforcement order with the SDRO** - you will need to make an *annulment* application to the **SDRO**. There is no time limit. For more information, see:

http://www.sdro.nsw.gov.au/lib/docs/forms/sfs_eo_003.pdf

An annulment application involves filling in a separate form for each enforcement order. On the application form you will need to state a good reason why the enforcement order should be annulled: for example, you didn't know about the fine until you got a letter from the SDRO, you knew about the fine but were unable to do anything about it because you were young/homeless/mentally ill/not aware of your legal rights, or you are not guilty of the offence.

There is a \$50 fee for each annulment application. This can be waived in cases of financial hardship. It is not always easy to get fees waived but the SDRO is often willing to accept just one \$50 fee for multiple annulment applications. If you are requesting a waiver of the fee, or asking to pay just one fee for multiple applications, you should include details about your financial circumstances. See the attached link for a statement of financial circumstances form:

http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_eo_006.pdf

If the annulment application is granted, the matter may be withdrawn but will probably be listed in court, and will proceed as if you had sent in a court election on a penalty notice.

If your annulment application is refused, you may appeal to the Local Court.

4.2 Court-imposed fines

(a) **If the court convicted and/or fined you in your absence:**

(1) **If this happened less than two years ago** - you may make an *annulment* application to the *court* (*Crimes (Appeal and Review) Act* section 4). You will need to demonstrate a good reason why you did not attend court, or some other reason in the interests of justice why your application should be granted. If

possible, you should seek legal advice before doing this. The application can be lodged over the counter at the court, or you can download a form from the Local Courts website and send it in. There is a fee but it can be waived or postponed in circumstances of financial hardship. Forms can be found at:

[http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Forms_Appeal_AnnulmentApplication.pdf/\\$file/Forms_Appeal_AnnulmentApplication.pdf](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Forms_Appeal_AnnulmentApplication.pdf/$file/Forms_Appeal_AnnulmentApplication.pdf)

- (2) **If it was more than two years ago** and you can show that there is some doubt about your guilt or liability for a penalty - you may make an **annulment** application to the **Attorney-General** (*Crimes (Appeal and Review) Act* section 5). If possible, ask a lawyer to help you with this. For more details, see:

http://www.lawlink.nsw.gov.au/Lawlink/lbs/ll_lsb.nsf/pages/lbs_reveiwandannulmentofconviction

(b) If you were present at court when the fine was imposed:

- (1) **If it was less than 3 months ago** – you may **appeal** to the **District Court** within 28 days (or within 3 months with the leave of the District Court) (*Crimes (Appeal and Review) Act* section 11). If possible, seek legal advice before appealing. The appeal can be lodged over the counter at the Local or Children’s Court that fined you, or you can download a form from the Local Courts website and send it in. There is an \$85 fee but it can be waived or postponed in circumstances of financial hardship. Forms can be found at:

[http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Forms_Appeal_NoticeOfAppealToDC.pdf/\\$file/Forms_Appeal_NoticeOfAppealToDC.pdf](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/Forms_Appeal_NoticeOfAppealToDC.pdf/$file/Forms_Appeal_NoticeOfAppealToDC.pdf)

- (2) **If it was more than three months ago** and you can show that there is some doubt about your guilt or liability - you may make an **annulment** application to the **Attorney-General** (*Crimes Appeal and Review Act* section 5). See paragraph 4.2(a)(2) above for more information.

The above options are the same regardless of whether the fines have already gone to the SDRO. If an annulment application is granted, the matter goes to court and proceeds as if it is listed for the first time.

5 If you want more time to pay

5.1 Penalty notice fines

- (a) **If the matter is still at penalty notice or penalty reminder notice stage** - the SDRO does not allow payment by instalments. If you can’t pay the fine in full within the 42 days allowed by the SDRO, and you don’t elect to take it to court, you will have to wait for it to become an enforcement order (which means incurring enforcement costs) and applying to the SDRO for time to pay.
- (b) **If the matter is at enforcement order stage with the SDRO** – you can make a **time to pay arrangement** with the **SDRO**.
- (1) If you are on Centrelink benefits you can arrange to pay by instalments through **Centrepay** deductions. This can be arranged with a phone call to the SDRO or by using the Centrepay deduction form at:

http://www.sdro.nsw.gov.au/lib/docs/forms/sfs_cp.pdf

- (2) If you are not eligible for Centrepay, you will need to complete a time to pay form, which can be found at:

http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_eo_011.pdf

5.2 Court fines

- (a) **If the fine is still with the court** – apply at the *court registry*. It is better to arrange for time to pay with the court, because you don't incur SDRO enforcement costs and you don't risk losing your driver's licence.

The court will usually allow payment by instalments, which must be paid directly to the court. Sometimes you can arrange to pay the fine at a different Local Court if it is more convenient. You will need to fill in a form and provide some proof of your income. Court fine information sheets and time to pay forms can be found at:

http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_forms.

- (b) **If the fine has already been referred to the SDRO** – you can make a *time to pay application* (see forms above at 5.1 (b)).

5.3 Appeal to Hardship Review Board

If the SDRO refuses your application for time to pay, you can appeal to the *Hardship Review Board*. For more information see:

http://www.hrb.osr.nsw.gov.au/frequent_questions/fines.html

6 If you want the fine written off, put on hold, etc

These options are only available once the fine has reached *enforcement order* stage.

6.1 Write-off

In SDRO language, *write-off* actually means deferring the fines for five years. At the end of the five years, if your financial circumstances have not improved and you have not had any more fines referred to SDRO for enforcement, your fines will be written off completely.

A write-off will only be granted to people who have a serious and long-term illness or disability, are unlikely to obtain regular employment, and are therefore unlikely to be able to pay their fines in the foreseeable future. For information see:

http://www.sdro.nsw.gov.au/lib/docs/forms/sfs_eo_002.pdf.

A write-off application is made by writing a letter to the SDRO accompanied by a statement of financial circumstances and supporting documents relating to your health, disability, etc.

Note that the SDRO is only interested in your current situation, not the circumstances in which the fine was imposed. *If you think you are not guilty or the fine was excessive*, you should first seek some legal advice about your *appeal* or *annulment* options.

For people in *prison*, a stay of enforcement action can be put on their fines until 3 months after their release. A prison welfare officer, or a probation and parole officer, can assist with this application.

6.2 Appeal to Hardship Review Board

If the SDRO refuses your application for a write-off, you can appeal to the **Hardship Review Board**. For more information see:

http://www.hrb.osr.nsw.gov.au/frequent_questions/fines.html

6.3 Stay

For people who can't currently pay anything towards their fines, but whose prospects may improve, the SDRO may be prepared to **stay** the fines for twelve months. A stay application is made in a similar way to a write-off application.

6.4 Remission

If you want to have your fines wiped completely (without having to go through the five year write-off period first), this is called **remission** and the only person who has authority to do this is the Governor, on the recommendation of the Attorney-General. Presumably such an application would only be granted in exceptional circumstances.

7 If you want to work off your fines

Until July 2009, the only way to work off your unpaid fines was to wait for the SDRO to issue a community service order. A community service order is only ever issued in rare cases, as a last resort before sending a fine defaulter to prison.

A **Work and Development Order** (WDO) is a new option. It is similar to a community service order but available at an earlier stage. You may be eligible for a WDO if you have a mental illness, cognitive impairment (including intellectual disability or brain injury), are homeless or are suffering from extreme financial hardship.

The SDRO has a Work and Development Order Fact Sheet available at:

<http://www.sdرو.nsw.gov.au/lib/docs/forms/sdr037.pdf>

There are also some detailed WDO guidelines at:

http://www.sdرو.nsw.gov.au/lib/docs/misc/wdo_guidelines.pdf

The Work and Development Order application form can be found at:

<http://www.sdرو.nsw.gov.au/lib/docs/forms/sdr037.pdf>

A WDO must be supported by an “**approved organisation**” or “**health practitioner**”. To apply for registration as an approved organisation, please see:

<http://www.sdرو.nsw.gov.au/lib/docs/forms/sdr036.pdf>

To apply for enrolment as a health practitioner, please see:

<http://www.sdرو.nsw.gov.au/lib/docs/forms/sdr042.pdf>

8 If you want to cut your fines out in prison

It is still possible to go to prison for non-payment of fines, but it is at the discretion of the SDRO, and usually doesn't happen until all other options (including community service) have been exhausted.

9 If you have lost your licence because of unpaid fines and want to get it back

If you don't do anything about your fines when an enforcement order is made, the SDRO may direct the RTA to impose licence sanctions. Your licence may be suspended and, if your fines are still not paid after six months, cancelled. At this stage your vehicle registration may also be cancelled. If you don't have a licence in the first place, the SDRO can impose a "customer business restriction" which may stop you from applying for your licence.

Note that they can't do any of the above if your fines are non-traffic fines and you were under 18 when they were incurred.

RTA sanctions can be lifted in the situations outlined below. If the SDRO tells you it has lifted the sanctions, you will have to check with the RTA before you start driving again. In some situations (eg if your licence has been cancelled, or if it has expired during the suspension period), you will have to re-apply for your licence. See the attached link for more information on RTA sanctions:

http://www.sdrow.nsw.gov.au/lib/docs/forms/sfs_eo_001.pdf

9.1 If you pay all your fines in full

Licence sanctions will be automatically lifted straight away.

9.2 If you make 6 payments on a time to pay arrangement

Licence sanctions will be automatically lifted after six regular payments (unless you have previously defaulted on a time to pay arrangement). If you default on your payments, licence sanctions will be re-imposed.

9.3 If you need a licence for work or personal reasons

You may be able to get your licence sanctions lifted before you have made 6 payments, but you will need to prove that a licence is absolutely essential for work or personal reasons.

If you need a licence for work reasons, a support letter from an employer or employment agency, saying why you need a licence for work, will help you convince the SDRO. The idea is that you will pay the fine back quicker if you are employed than if you can't work because you haven't got your licence.

If you need a licence for personal reasons, your circumstances must be compelling, eg having to drive yourself or a sick relative to frequent medical appointments, living in a remote area with no other way to get your children to school.

9.4 If you have lodged an annulment application or appeal

If you have:

- made an annulment application to the SDRO (in relation to a penalty notice enforcement order), but it has been knocked back, and you have appealed to the Local Court; or
- lodged an appeal or annulment application to the court (in relation to a court-imposed fine)

the RTA must (if asked by you) reinstate your licence while the annulment application or appeal is being decided. If your annulment application or appeal is unsuccessful, the licence sanctions may be re-imposed.

If your appeal or annulment application is successful, and you no longer have any outstanding enforcement orders at the SDRO, any licence sanctions should be automatically lifted. In practice, you may need to ask the SDRO to lift them.

9.5 If you make a write-off application

If your fines are written off (ie deferred for five years) the SDRO will usually lift your licence sanctions as well.

9.6 If you have applied for a stay

You may be able to get your licence sanctions lifted but you will need to prove that a licence is absolutely essential for work or personal reasons.

10 Contact details

10.1 State Debt Recovery Office

Correspondence:

When fine is at **penalty notice** stage: PO Box 786 Strawberry Hills NSW 2012

When fine is at **enforcement order** stage: PO Box A2571 Sydney South NSW 1235

Ph: 1300 655 805

Fax: 6354 7271, 6354 7302 (time to pay applications only)

www.sdro.nsw.gov.au

10.2 Hardship Review Board

(To appeal refusal of time-to-pay or write-off applications)

GPO Box A2571, Sydney South NSW 1235

Ph: 6354 7116

Fax: 6354 7263

fineshrb@osr.nsw.gov.au

<http://www.hrb.osr.nsw.gov.au/>

10.3 Attorney-General's Department

(To apply for annulment of court fines where ineligible to apply to the court)

Legal Services Branch

Attorney-General's Department

GPO Box 6

Sydney NSW 2001.

Ph: (02) 8224 5330

director-lsb@agd.nsw.gov.au

10.4 Office of the Governor

(To seek remission of fines)

Office of the Governor of New South Wales
Level 3, Chief Secretary's Building
121 Macquarie Street
Sydney NSW 2000

10.5 Courts

See the following links for court contact details:

Local Court:

http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_location

Children's Court:

http://www.lawlink.nsw.gov.au/lawlink/childrens_court/ll_cc.nsf/pages/CC_contact_us

District Court:

http://www.lawlink.nsw.gov.au/lawlink/district_court/ll_districtcourt.nsf/pages/dc_contactus

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The Shopfront Youth Legal Centre is a service provided by Freehills, in association with Mission Australia and the Salvation Army.

This document was last updated in October 2009 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time. This document provides a summary only of the subject matter covered, without the assumption of a duty of care. The summary should not be relied on as a substitute for legal or other professional advice.

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