

# Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

Jane Sanders

*Youth Justice – Your Guide to Cops and Court in NSW* is an ongoing project of Macquarie Legal Centre. This edition was produced in partnership with Shopfront Youth Legal Centre.

THE FEDERATION PRESS  
2010

Published in Sydney by  
The Federation Press  
PO Box 45, Annandale NSW, 2038.  
71 John St, Leichhardt, NSW, 2040.  
Ph (02) 9552 2200. Fax (02) 9552 1681.  
E-mail: [info@federationpress.com.au](mailto:info@federationpress.com.au)  
Website: <http://www.federationpress.com.au>

National Library of Australia  
Cataloguing-in-Publication entry

Youth justice : your guide to cops and court in New South Wales / Macquarie Legal Centre.

4th ed  
Includes index.  
ISBN 978 186287 812 9 (pbk)

Juvenile justice, Administration of - New South Wales.  
Juvenile delinquency - New South Wales.  
Child welfare - New South Wales.  
Youth - Legal status, laws, etc - New South Wales.  
Children - Legal status, laws, etc - New South Wales.  
Teenagers - Counselling of.

364.3609944

© Macquarie Legal Centre 2010.  
This publication is copyright. Other than for the purposes of and subject to the conditions prescribed under the Copyright Act, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Enquiries should be addressed to the publisher.

Typeset by The Federation Press, Leichhardt, NSW.  
Printed by Ligare Pty Ltd, Riverwood, NSW.

# Unpaid fines

---

## Unpaid fines: what happens to you?

### What is a fine?

A fine is penalty (punishment) imposed for an offence. A fine can be imposed by:

- a court, after you have been found guilty of (or pleaded guilty to) a charge, or
- a police officer or other official, who may give you a penalty notice (also known as an infringement notice or on-the-spot fine).

### The Fines Act 1996 and the State Debt Recovery Office

The *Fines Act 1996* sets out how fines are imposed and how unpaid fines are dealt with.

The government agency that deals with unpaid fines is the State Debt Recovery Office (SDRO).

### Which fines are covered by the Fines Act 1996?

Fines and penalties that *are* covered by the *Fines Act 1996*

- infringement/penalty notice fines, for traffic offences (eg speeding or running a red light), parking, skating, disobeying police move-on directions, travelling on the train without a ticket, etc
- fines imposed by a court as a penalty for an offence
- victims compensation levy imposed by the court (see *Outcomes of court* chapter)
- court costs.

Money you owe that is *not* covered by the *Fines Act 1996*

- Compensation to the victim of your crime ordered by the court, eg to replace damaged or stolen property (this is different from the victims compensation levy). If you don't pay this money to the court, the victim can apply to the court to get the money from you. You can ask the court for extra time to pay.
- Restitution – this is money you have to pay to the Victims Compensation Tribunal after it has paid compensation to the victim of your crime. The State Debt Recovery Office does get involved if you don't pay your restitution debt, but it's treated differently from fines. See *Victims compensation restitution orders* on page 389.
- Civil debts, where you owe money to someone else or to a company (eg unpaid bills, or traffic accidents where the court orders you to pay the other person for damage to their car because you were at fault).

## What happens when you get a fine?

### Fines given by the courts

When the court imposes a fine (or court costs or a victims compensation levy), the court must give you a written notice. This is usually mailed out about a week after the court date.

You have 28 days to pay. The magistrate or judge cannot extend this 28 days, but you can apply at any court office for extra time to pay. Take proof of your income (eg bank statements or evidence that you get income support from Centrelink) and some other ID. The court staff will usually grant time to pay by instalments if you make a reasonable offer.

If you have not paid the fine by the time you agreed to, or if you miss a few payments, the court sends the fine to the State Debt Recovery Office (SDRO) for the issue of an enforcement order.

### Penalty notices

A *penalty notice* (also known as an infringement notice) may be issued by a police officer or another official such as a transit officer, council ranger, fisheries and wild-life inspector, etc.

If you have not paid the fine or done something about it within 21 days, a reminder notice will be sent to you, giving you another 28 days to pay.

If you have a penalty notice or reminder notice, your options are:

- Pay the fine to the State Debt Recovery Office (SDRO) by the due date. They will accept payments by instalments but only if the whole fine is paid off by the due date.

- Fill in the *court election* form on the back of the penalty notice or reminder notice. It is usually a good idea to get legal advice if you are thinking of taking your fine to court.
- Write to the SDRO asking them to withdraw the fine or to consider issuing a caution instead. Agencies like RailCorp, local councils and the police now have the power to give you a caution instead of a fine. This is different from a caution under the *Young Offenders Act 1997* and is available for over 18s as well as under 18s.
- If it is a camera-detected traffic offence (eg speeding, running a red light) and you were not the driver, you need to send in a statutory declaration form with the name and address of the person who was driving. For more information see *Driving: rules and traffic offences* chapter.

If you don't do anything about your fine within 28 days after the reminder notice, the SDRO issues an enforcement order.

## What can the SDRO do to make you pay the fine?

The SDRO takes up to five stages of action to try to get you to pay the fine.

---

### \$\$\$ WARNING!

The SDRO adds extra costs to your fine throughout the SDRO process, starting with the issue of the fine enforcement order.

- \$50 (or \$25 for fines incurred when under 18) when they send you the enforcement order (Stage 1)
  - \$40 if the RTA is involved (Stage 2)
  - \$50 if the SDRO takes any civil enforcement action against you (Stage 3).
- 

### Stage 1 – enforcement order

First, the SDRO makes an *enforcement order*. It sends you a notice with the amount you owe and a new due date for payment. You have 28 days to do something about the fine.

There are a few things you can do at this stage including paying off your fine by instalments, making an annulment application, applying for a *work and development order*, or asking to have your fines stayed or written off (see *Unpaid fines: what can you do about it?* on page 398).

### Stage 2 – SDRO notifies the RTA

If you haven't done anything about the fine by the due date on the enforcement order, the SDRO sends a notice to the Roads and Traffic Authority (RTA) telling them

to suspend your driver's licence or cancel your car registration. The SDRO adds another \$40 to your fine at this stage.

The RTA or SDRO will send you a notice, telling you the date (usually about 5 days later) the suspension or cancellation will begin.

Not only will your licence be suspended and your registration cancelled, the RTA may also impose a *customer business restriction*. This means they can refuse to have any dealings with you, for example, they won't let you transfer a registration, apply for a number plate or book or do a driving test. This means that, if you haven't got a licence, you will not be able to get one until your fines are sorted out. *However, they can't stop you getting a proof of age card.*

If your licence has been suspended and you still haven't sorted out your fines within 6 months, the RTA will cancel your licence.

Once you have paid the fine in full or if the SDRO lets you get your licence back earlier, the RTA sends you a notice saying that they have lifted the restrictions on your licence or registration. If your licence has been *suspended*, you will automatically get it back (unless it has expired in the meantime). If your licence or rego (registration) have been *cancelled*, you won't automatically get it back and will have to reapply to the RTA (see *Getting your licence back* on page 403).

---

## WARNING! DANGEROUS ROAD AHEAD!

- It is a serious offence to drive while your licence is suspended or cancelled. You will have to go to court and you may end up with another fine. In most cases you will also be disqualified from driving for at least 3 months, and sometimes for 2 years.
- If you have never had a licence, it is a serious offence to drive unlicensed. For a first offence, it is likely you will just get a fine, but for a second offence, you could be disqualified from driving for 3 years.
- If you drive an unregistered vehicle, you are committing another offence. Usually, if a vehicle is unregistered, it also has no third party insurance. However, if your rego is cancelled due to fine default, the third party insurance policy is *not* cancelled.

For more information, see *Driving: rules and traffic offences* chapter.

---

### ***Under 18 when you got the fine?***

If you were under 18 when you got the fine, and it was *not* a traffic or parking fine, they can't suspend or cancel your licence or stop you from renewing it.

However, the RTA might still be able to cancel your rego, or stop you from applying for a licence if you haven't got one.

### Stage 3 – Civil enforcement

If you still haven't paid the fine after Stage 2, the next stage is *civil enforcement*.

At this stage the SDRO can do three things:

- take and sell your possessions
- garnishee (take money from) your wages or bank account, or
- put a mortgage on any land you own.

The SDRO can issue an *examination summons* to find out about your assets and income. This means that you have to appear in court to answer questions about your income and possessions, so the SDRO can work out what action to take.

If the SDRO does any of these things, they add another \$50 to your fine.

The only way to stop these things is to pay the fine in full or to make other arrangements such as time to pay or a work and development order.

#### ***Property seizure order – they sell your things***

The SDRO can issue a *property seizure order* which lets the sheriff's office take and sell your property, including furniture, TV, cars and other belongings up to the value of the unpaid fine.

The sheriff's office cannot seize:

- clothes
- bedroom or kitchen furniture
- any tools of trade, plant and equipment, professional instruments or reference books up to the value of \$500 if they are being used by you for work or study
- things that belong to other people in your house (eg your parents), or
- things that you own jointly with someone else (eg your spouse).

The sheriff usually gives you a few days' notice before they take your things. The only way to stop them from taking your things is to pay the fine, or to make special arrangements to get the SDRO to call off the property seizure order. If you have paid your fine, make sure you get a receipt to show the sheriff.

**Warning!** The sheriff (or anyone else carrying out this order) can demand your name and address. If you don't give it, they can fine you. And don't assault or swear at the sheriff – they can arrest you!

#### ***Garnishee order***

The SDRO can issue a *garnishee order*. This means the SDRO takes money out of your wage, salary or bank account. The SDRO must leave you a certain amount to live on. The SDRO doesn't garnishee Centrelink payments.

***Mortgage your land***

The SDRO can register a *charge on land*. This means that the SDRO has a mortgage on any land you own for the amount of money you owe.

**Stage 4 – community service order (CSO)**

If you haven't paid the fine after Stages 1-3, or if Stage 3 is not appropriate to you (eg if you do not have any assets or income), then the SDRO issues a *community service order* (CSO). This means that you do community work instead of paying the fine.

Community service pays off the fine at \$15 per hour. The maximum number of hours for an adult per order is 300 hours. The maximum number of hours per order for a person under 18 is 100 hours (these are different from the maximum hours that may be imposed when a court gives you a CSO).

If you are over 18, Probation and Parole supervises your CSO. If you are under 18, Juvenile Justice supervises your CSO.

***What if you don't do your community service work?***

If you do not do your CSO, then the SDRO can revoke (cancel) your CSO. If this happens you move on to Stage 5: prison (see below), unless you pay your fines in full.

You can apply to the SDRO to reverse this revocation, which means giving you another chance to do the work and avoid prison.

***What if you can't do your community service work?***

SDRO is not allowed to make a community service order if you are not capable of performing community work (eg because you have a disability). The SDRO does not have to ask you if you are capable. It is up to you to convince the SDRO that you are not suitable for a CSO.

If the SDRO decides that you are not capable of doing community service, then you *do not* go to Stage 5 (prison). Instead, your fines will probably be written off.

---

**WARNING!**

Until Stage 4, you can apply for more time to pay. Once your fine reaches Stage 4 you cannot apply for more time. The only way you can avoid CSO or prison, once you get to Stage 4, is to pay the fine and the added costs in full.

---

**Stage 5 – prison*****Over 18s***

Prison is the absolute last resort. If the SDRO revokes your CSO (because you didn't do the work), then the SDRO issues a *warrant of commitment* or *commitment war-*

*rant* for your imprisonment. This warrant orders the police to arrest you and take you to prison.

Prison cuts out the fine by \$120 a day. The maximum that you can serve for a fine is 3 months. You can cut out the fine by full-time prison or by periodic detention.

Already in prison for something else? If you get to Stage 5 (ie if the SDRO issues a commitment warrant for your arrest and imprisonment) and then you go to prison for something else (not an unpaid fine), then you can serve the time for the fine *concurrently*, which means that you can cut out your fines at the same time as you serve time for your other matter. So, for example, if you get a prison sentence of 3 months for a crime, you can cut out almost \$11,000 of fines while you are there, without serving any extra time.

Ask the prison authorities to *call up your unpaid fines*. You can only do this for fines which have reached Stage 5. If you are still at Stage 4 when you go to prison, your CSO simply waits until you get out.

---

## WARNING!

**Warning 1!** Police executing (carrying out) a commitment warrant can demand your name and address and to see your identification. If you don't give it, they may fine you.

**Warning 2!** You don't get 7 days to pay (unlike under the old law). However, police may have some discretion (choice) to delay arresting you while you pay the fine or try to get the warrant cancelled. If you want to avoid prison you should urge the police to exercise their discretion so you can do this.

---

## *Under 18s*

Under 18s cannot be locked up for unpaid fines.

When you turn 18 you still don't go to prison for the fine, unless you get another fine after you turn 18 and you don't pay that fine. In this case you can go to prison for the adult *and* the juvenile fines.

## Unpaid fines: what can you do about it?

What can you do if you can't pay your fines? Or you don't think you should have got a fine? Or your licence was suspended because of your fines and you want to get it back? Here are some suggestions.

## More time to pay (by instalments)

You can apply to the SDRO for more time to pay, any time from Stage 1 (when an enforcement order is made) until before Stage 4 (community service).

You can apply for more time to pay by:

- If you are on Centrelink benefits, you can pay off your fines by Centrepay, which means your payments will be automatically deducted from your benefits. If you would like to pay this way, you can fill in a Centrepay form or call the SDRO and arrange it over the phone.
- Otherwise you can fill in an *Application for time to pay* form and send it to the SDRO. They will usually accept your application if they think it is reasonable. If you are on low income, about \$10 a week or \$20 a fortnight is probably reasonable.

As long as you stick to your time to pay agreement, the SDRO won't take any action against you. If you don't stick to your agreement, the SDRO can continue to move through the action stages outlined above. So if you are having problems keeping up the payments, and you want to avoid the SDRO taking action against you, talk to the SDRO to negotiate a new agreement.

## Apply to annul the fine

Some people get enforcement orders from the SDRO about fines that they:

- don't know about (eg might have been incurred by someone else using your name)
- want to challenge because they think they are not guilty of the offence, or
- want to challenge because they think the amount of the fine is too much.

In these situations you might be able to get the fine annulled. If a fine is annulled, it means the fine will either be withdrawn or dealt with in court.

## Court fines

For fines imposed by a court when you weren't present, you will have to apply to the court (within 2 years). This is called making an annulment under section 4 of the *Crimes (Appeal and Review) Act 2001*. See *If you miss court* on page 353 for more.

## Penalty notice fines

For penalty notice fines, you must make an annulment application to the SDRO. You will need to fill in a form and pay a fee (but this fee can be waived or postponed if you're suffering financial hardship).

You'll need to say why it should be annulled. For example:

- you didn't know about the fine until you got the enforcement order

- you are not responsible for the fine and you haven't had the chance to challenge it until now
- you were *hindered by accident, illness or misadventure or other cause* from doing something about the fine earlier (eg you were homeless, you have mental illness), or
- there is *other just cause* (some other very good reason why you should be allowed to challenge the fine in court).

If the fine is annulled it will usually be sent to court, where you can plead guilty or not guilty.

Sometimes, when fines are annulled, they are not referred to a court, but are dropped because it's clear you are not guilty (eg if you provide the SDRO with evidence that they are someone else's fine).

## Apply for a work and development order

A *work and development order* (WDO) is a new option, introduced in July 2009 for a 2-year trial period.

### What is a work and development order?

A WDO is an order made by the SDRO requiring a person to do any one or more of the following:

- undertake unpaid work for an *approved organisation*
- undergo medical or mental health treatment in accordance with a health practitioner's treatment plan
- undertake an educational, vocational or life skills course
- undergo financial or other counselling
- undergo drug or alcohol treatment
- (if the person is under 25) undertake a mentoring program.

### Who is eligible for a work and development order?

You may be eligible for a WDO if you are having trouble paying your fines due to:

- intellectual disability or cognitive impairment (eg brain injury)
- mental illness
- homelessness, or
- acute economic hardship (a person is in acute economic hardship if meeting their basic needs, plus allowing for \$40 a fortnight in disposable income, would leave them unable to repay their fine at the minimum instalment of \$10 a fortnight).

## How to apply for a work and development order

You can apply for a WDO at any time after an enforcement order has been made, but before a CSO is made.

A WDO application must be supported by an *approved organisation*, or in the case of mental health or medical treatment, a *health practitioner* qualified to provide that treatment. Organisations and health practitioners may apply to the SDRO to become an *approved organisation* or an *enrolled health practitioner*.

The approved organisation or health practitioner must provide some evidence that:

- your particular hardship contributed or is contributing to your inability to pay the fine, or
- as a result of your condition, it is more appropriate for you to undertake the work or activities proposed rather than pay the fine.

## Effect of a work and development order

If a WDO is granted, any SDRO enforcement action is stopped and RTA sanctions are lifted (see *Unpaid fines: what happens to you?* on page 392).

Under a WDO, you *work off* or *cut out* your fines at the following rate:

- **Unpaid work:** \$30 per hour, up to a maximum of 300 hours for over 18s or 100 hours for under 18s.
- **Treatment, counselling, case management or mentoring:** \$1000 per month.
- **Vocational, educational or life skills courses:** \$50 per hour or \$350 per day, up to a maximum of 3 full days per month.

## If you don't complete a work and development order

Unlike a CSO, failure to complete a WDO does not lead to imprisonment.

If you don't finish a WDO, or if you finish the WDO but still have fines owing, you will still have to pay whatever is left. In some cases the SDRO may agree to write off the remaining fines.

## More information

There is a work and development order fact sheet and detailed guidelines on the SDRO website at [www.sdرو.nsw.gov.au](http://www.sdرو.nsw.gov.au).

## Apply to write off or waive the fine

### Write off

A *write off* is a deferral for 5 years – the fine does not have to be paid as long as you do not get any other enforcement orders in the next 5 years. You are allowed to get

finest in this 5-year period, but you must sort them out before they reach enforcement order stage. After 5 years with no enforcement orders, the fine will disappear forever.

It is not clear exactly how bad your circumstances need to be before the SDRO agrees to write off the fine, but if, for example, you have a terminal illness, a serious mental illness or a disability, you might be successful.

The circumstances of the offence are irrelevant to whether or not you can get a write off or a waiver.

At any time you can apply to the SDRO to write off the fines. But if there is a reasonable chance that you will, in the future:

- be able to pay the fine, or
- have property which the sheriff could sell to pay the fine, or
- be able to do community service

the SDRO will probably refuse to write off the fine.

---

## EXAMPLES OF THE SDRO WRITING OFF PEOPLE'S FINES:

The SDRO wrote off the fine of a person with cancer, on the condition that the person doesn't get any more unpaid fines that go to the SDRO for 5 years.

The SDRO wrote off the fines of a young person with a serious mental illness and a learning disability, who had trouble understanding what the fines were for and her legal obligations to pay them.

---

If your fines are written off, RTA sanctions will usually be lifted so you will be eligible to get a licence, register a car, etc.

If the SDRO refuses to write off your fines, you may apply to the Hardship Review Board, which may direct the SDRO to write off your fines.

## Waiver

A *waiver* or *remission* extinguishes the fine forever. It is much harder to get a waiver than it is to get a write off.

Only the Minister (the NSW Treasurer) can waive the fine. If you apply to the SDRO, they will pass your application on to the Minister. Your circumstances must be very serious for this to happen.

## Apply to put a stay on the fine

An alternative to asking the SDRO to write off or waive the fine is to ask them to put a *stay* on the fine. This means that you defer paying the fine for a period of time.

The SDRO will sometimes stay your fines for up to 12 months if you are in severe financial hardship.

If you are in custody (locked up), the SDRO will usually stay your fines until 3 months after your release date.

---

## AMINA

Amina, aged 19, had just finished a rehab program and had just found a place to live. She wanted to get a licence, get a job and get on with her life. Unfortunately she owed the State Debt Recovery Office about \$5000 worth of unpaid fines. Most of these were train fines which she had incurred a couple of years ago while she was living on the street and using drugs.

Amina wanted to start paying off her fines, but her rent and living expenses took up most of her social security benefits. If only she could get a licence, then she would have a real chance of getting a job and maybe then she could pay her fines.

Amina wrote to the State Debt Recovery Office, enclosing a letter from her counsellor which explained the situation. The SDRO agreed to *stay* her fines for 12 months and *lift the RTA sanctions*. This means she did not have to start paying off her fines for another year, and in the meantime would be able to go for her licence.

---

## Getting your licence back

If your licence or rego has been suspended or cancelled, you may be able to get it back. Or, if you don't already have a licence, you might be able to get the SDRO to lift the RTA sanctions so you can apply for a licence.

The SDRO will lift RTA sanctions (meaning you can get your licence or re-register your car) if:

- you pay the fines in full
- your fines have been annulled
- the SDRO has made a work and development order, or
- you make six or more regular instalment payments, but only if you have not previously defaulted on a time to pay agreement.

The SDRO may also agree to lift RTA sanctions if:

- you need to sell your car to pay off your fines
- you really need a licence to get a job or for personal or family reasons (a support letter from your employer or job placement agency, saying why you need a licence, will help you convince the SDRO)
- you have applied for a work and development order

- you have applied to have your fines annulled
- your fines have been stayed or written off.

If the SDRO agrees to lift the sanctions, you will automatically get your licence back if it has been *suspended*.

If your licence or rego has been *cancelled*, you will have to reapply for it at the RTA. If your licence has been cancelled for a long time you may have to do the driving test again.

If you are paying off your fines or doing a work and development order, the licence sanctions can be reimposed if you don't keep up with your payments or your WDO.

## More information

- The SDRO has a helpful website with policies, forms and other information at [www.sdro.nsw.gov.au](http://www.sdro.nsw.gov.au).
- The Shopfront Youth Legal Centre has a fines kit available on their website at [www.theshopfront.org](http://www.theshopfront.org).
- Lawyers can advise you about unpaid fines (see *Getting legal advice and assistance* chapter).