

Lifting NSW Roads and Maritime Services Sanctions prior to Enforcement Orders being Paid in Full



Office of
State Revenue
State Debt Recovery

Purpose

When an enforcement order is issued and not resolved by the due date, the State Debt Recovery (SDR) will attempt to impose NSW Roads and Maritime Services (RMS) sanctions against the client.

A successful RMS sanction may involve the client's licence being suspended or cancelled, the client's vehicle registration being cancelled or the client being restricted from conducting business with RMS.

The SDR has a wide discretion to lift RMS sanctions. The SDR may negotiate the lifting of RMS sanctions either in response to a client request or as a result of SDR contacting the client directly in relation to an unpaid enforcement order.

This document describes the SDR policy for lifting RMS sanctions prior to unpaid enforcement orders being paid in full.

Definitions

CLIENT: has the same meaning as the definition of fine defaulter in section 3 of the Fines Act 1996 (the Act).

EO: a court fine enforcement order or penalty notice enforcement order as defined in sections 12 and 40 of the Act.

FINES HARDSHIP REVIEW BOARD: Means the body constituted under Section 101A(1) of the Act.

SANCTION LIFT: is the process described in section 65(5) of the Act whereby the SDR directs the NSW Roads and Maritime Services (RMS) to lift a suspension against a client's driver licence, cancellation of a vehicle registration or suspension of dealings with RMS.

TIME TO PAY (TTP): means any arrangement to repay one or more enforcement orders under a formal order issued by SDR, as described in section 100(3) of the Act.

RMS: means NSW Roads and Maritime Services.

Legislative basis

This discretion is exercised under:

1. The broad provisions contained in section 65(4) and 65(5) of the Act, which provide that RMS will cease enforcement action when directed by SDR and that SDR may make that direction prior to a client's outstanding fines being paid in full.
2. Amendments to the Act introduced in 2004, specifically section 65(4A) which provides that SDR must direct RMS to cease enforcement action if a client is granted a first extension of time to pay a fine and the client makes six payments in accordance with that extension of time.

The intent of the legislation is taken to be that the six consecutive payments are in accordance with a TTP issued by SDR.

3. Section 100(5) of the Act provides that further enforcement action will be suspended if a TTP is approved for a client.

Policy

General requirements for lifting of RMS sanctions

Generally, the lifting of RMS sanctions prior to enforcement orders being paid in full will be dependent on the client being granted further time to pay under the SDR policy on “Allowing time to pay on unpaid enforcement orders”.

The lifting of RMS sanctions may be approved on a case-by-case basis where the client meets one or more of the following conditions:

1. The client makes an up-front payment

In determining the amount of any up-front payment, SDR may take into account any or all of the following:

- i. the applicant's income
- ii. the applicant's expenditure
- iii. the amount of the debt to be repaid
- iv. whether a previous time to pay order has not been complied with
- v. the applicant's commitment to pay previous debts (whether or not by instalment).

2. The client demonstrates a **commitment to comply with a Time to Pay Order**

Sanctions may be lifted for a client who can demonstrate a commitment to comply with a TTP, however does not fall within the mandatory sanction lift provisions contained within section 65(4A) of the Act.

3. The **health or safety of persons (other than the client) would be put at risk**

Supporting documentation may be required to establish the need for a licence and the physical health and safety of the other person who is the subject of the application.

4. The **medical circumstances** of the client require a licence

Supporting documentation may be required to establish the need for a licence and the medical circumstances of the client.

5. The client **requires a licence to continue employment**

Supporting documentation may be required to verify the client's claim that without a licence they would be prevented from continuing employment.

6. **Unemployed clients**

Sanctions may be lifted for a client where a licence is required to obtain work. Supporting documentation may be required to verify the client's claim.

7. **Remote location**

Sanctions may be lifted for a client who lives in a remote area without access to transport. Supporting documentation may be required to establish that the client lives in a remote location and/or that public transport is not available.

8. **Koori Community and crime prevention initiatives**

In accordance with initiatives focused on crime prevention, sanctions may be lifted for members of rural Koori communities who may never have held a licence and/or have enrolled in a driving school. Supporting documentation may be required to verify the client's claim.

System or processing related sanction lifts

Authorised SDR Officers may approve the lifting of RMS sanctions on grounds not otherwise specified in this policy where:

1. a client has multiple RMS numbers which, in the opinion of the officer, have resulted in sanctions being unfairly imposed on a client; or
2. in the opinion of the officer, there has been an unreasonable delay in responding to a client application which, if approved, would cause the RMS sanction to be lifted; or
3. a system or automated sanction lift by the system has failed to work correctly; or
4. an RMS sanction is imposed in relation to a file which has been duplicated or otherwise contains bad data.

Unusual or extenuating circumstances

Authorised SDR officers may approve the lifting of RMS sanctions on grounds not otherwise specified in this policy where, in the opinion of the officer, continued imposition of RMS sanctions is harsh or unreasonable.

When applying this criteria, the officer should be satisfied that the requirements and a timeframe to resolve the fines is communicated to the client.

Advocacy groups

An application to lift sanctions may be made on behalf of a client by a recognised advocacy group, subject to privacy rules.

Any sanction lift determination may be made in consultation with an advocacy group, subject to privacy rules.

TTP arrears

Where a client has entered into a TTP and fails to make the required payments, the TTP may be cancelled and section 64(4B) of the Act provides that RMS sanctions may be re-applied.

Review

A senior officer may review a lower graded officer's decision to decline an application for sanction lift.

An application for review may be made verbally or in writing; however, a client may be required to provide documentation to support the request.

A reviewing officer will exercise discretion when considering the circumstances provided in the original application. Each application will be considered independently and on its own merit.