



# Guidelines for Writing Off Fines

Document number: 1	Version number: 2.0.1
Date: Tuesday, December 20, 2016	

## Contact details

Name: Julianne Evans	Position: Director Fines Debt
Business Unit: Collections	Division: Office of State Revenue



# Table of Contents

<b>Guidelines for Writing Off Fines</b>	<b>1</b>
<b>1. Policy Statement</b>	<b>1</b>
1.1 Objectives	1
1.2 Scope	1
1.3 Ethical Conduct	1
<b>2. Policy Components</b>	<b>2</b>
2.1 Responsibilities	2
2.2 Definitions	3
<b>3. Policy Components</b>	<b>4</b>
3.1 Grounds	4
3.1.1 Fine defaulter unable to be located	4
3.1.2 Fine defaulter incapable of making payment:	4
3.1.3 Liability not contested but continued enforcement unfair or otherwise unjust	4
3.1.4 Data Integrity	5
3.1.5 The fine is not recoverable at law	5
3.1.6 Uneconomical to pursue	5
3.1.7 Deceased	6
3.2 Resumption of enforcement action where a fine is written off	6
3.3 Applications	7
3.4 Determining write offs	7
3.5 Record of written off fines	7
3.6 Partial write offs	8
3.7 Consistency with any other current guidelines	8
3.8 Commencement date	8

<b>4.</b>	<b>Related Policies and Documents</b>	<b>9</b>
<b>5.</b>	<b>Document Control</b>	<b>10</b>
5.1	Document Approval	10
5.2	Document Version Control	10
5.3	Review Date	10

# 1. Policy Statement

## 1.1 Objectives

- 1.1.1. Section 101 of the *Fines Act 1996* (the Act) empowers the Commissioner of Fines Administration to write off unpaid fines in accordance with guidelines issued by the Minister. Treasurer's Direction 450 also provides for debts due to the State to be written off.
- 1.1.2. These guidelines are issued under section 120 of the Act and set out the circumstances under which fines may be written off in accordance with the Act and Minister's Directions. They replace guidelines issued by the Minister in 2012.

## 1.2 Scope

- 1.2.1. These guidelines apply to the Commissioner of Fines Administration and all Office of State Revenue staff members who are delegated under section 116A of the Act to write off fines under Section 101.
- 1.2.2. It also applies to all NSW Department of Finance Service and Innovation activities, including system and automated functions, that relate to or are affected by the writing off of fines.

## 1.3 Ethical Conduct

- 1.3.1. All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the Code of Conduct.
- 1.3.2. All financial transactions must be carried out in accordance with the Treasurer's Directions issued under Section 9 of the *Public Finance and Audit Act 1983*.

## 2. Policy Components

### 2.1 Responsibilities

Each of the following parties has specific assigned responsibilities under this policy:

Deputy Secretary, Office of State Revenue and Commissioner of Fines Administration

The Commissioner of Fines Administration is responsible for:

- Seeking ministerial approval for these guidelines.
- ensuring that Office of State Revenue staff comply with these guidelines.
- ensuring that the most recent approved version of these guidelines is available to staff.
- ensuring that appropriate delegations are approved and described within a delegations instrument which is made available to officers responsible for making decisions under these guidelines.
- determining any business rules which may be required to allow the practical application of these guidelines.
- ensuring adequate resources – including computer systems - are available to perform any minimum requirements set out in the guideline.

## 2.2 Definitions

- 2.1.1 **COMMISSIONER:** means the Commissioner of Fines Administration employed under Section 114 of the Act
- 2.1.2 **FINE:** means a monetary amount defined by Section 4 of the Act and relevant regulations for which a fine enforcement order may be made. A fine does not include an ancillary monetary order made by a court enforceable under Part 6 of the Act.
- 2.1.3 **ENFORCEMENT ORDER:** means a court fine enforcement order or a penalty notice enforcement order as defined in the Act.
- 2.1.4 **FINE DEFAULTER:** has the same meaning as the definition of *fine defaulter* in section 3 of the Act.
- 2.1.5 **OSR:** means Office of State Revenue
- 2.1.6 **WRITE OFF:** means cancellation of a fine defaulter's liability for payment of the amount owing under an enforcement order in accordance with section 101 of the Act.

## 3. Policy Components

### 3.1 Grounds

The Commissioner may write off an amount owing under an unpaid enforcement order where any one of the following criteria is satisfied<sup>1</sup>:

#### 3.1.1 Fine defaulter unable to be located

A full search of the primary data sources available to the Commissioner has failed to locate the fine defaulter and there is no practical way for the Commissioner to pursue further enforcement action. Any determination should take into consideration the following:

- (i) the amount involved;
- (ii) the type of fine involved; and
- (iii) advice provided by the Crown Solicitor or appropriate agency where such advice has been sought

#### 3.1.2 Fine defaulter incapable of making payment:

Where the Commissioner considers:

- (i) enforcement action is unlikely to succeed due to the financial, medical or domestic circumstances of a fine defaulter<sup>2</sup>; and
- (ii) those circumstances are likely to remain unchanged during the next five years.

#### 3.1.3 Liability not contested but continued enforcement unfair or otherwise unjust

Where liability has not been disputed but the Commissioner considers that in the circumstances it would be unfair or unjust to continue to enforce the enforcement order.

---

<sup>1</sup> Where an outstanding balance contains Victims Compensation Levy, determinations around eligibility for write off should be made in accordance with Sections 18(6) and 18(7) of the *Fines Act 1996*.

<sup>2</sup> For the purposes of these guidelines, incarceration does not constitute grounds for an application under this criterion unless the length of incarceration is such that consideration is made under the Uneconomic to Pursue (3.1.6) component of these guidelines.

The Commissioner may also write off an amount owing under an enforcement order on a case-by-case basis where exceptional circumstances not identified in these guidelines exist.

### **3.1.4 Data Integrity**

Where the integrity of the data surrounding the fine makes recovery unlikely.

For the purpose of this guideline, data integrity includes:

- (i) information that the Commissioner believes is unlikely to be either correct or still current; and
- (ii) where insufficient or missing information is likely to cause further enforcement action to be unsuccessful.

### **3.1.5 The fine is not recoverable at law**

An amount owing is deemed to be not recoverable at law where:

- (i) the enforcement order relates to a penalty notice and forms part of the pre-sequestration debt of a discharged bankrupt; or
- (ii) the enforcement order relates to a penalty notice which is a provable debt and represents the balance outstanding after an Official Receiver, Trustee in Bankruptcy or a Liquidator notifies that either no dividend or a final dividend is to be, or has been, paid; or
- (iii) when an amount outstanding relates to a penalty notice which is a provable debt and represents the balance outstanding following the finalisation of a deed of arrangement that has been approved by creditors under Part 5.3A of the *Corporations Act 2001*.

### **3.1.6 Uneconomical to pursue**

An amount owing on an enforcement order may be considered uneconomical to pursue where the Commissioner determines that the total costs of recovery action will exceed the return to Crown or commercial fine defaulters. Any such determination shall take into consideration the following:

- (i) the amount involved; and
- (ii) the length of time the fine has been outstanding (including debt considered to be aged); and

- (iii) whether adequate enforcement action has been taken to recover the fine; and
- (iv) advice provided by the Crown Solicitor or appropriate agency where such advice has been sought.

An amount outstanding may also be treated as uneconomical to pursue where a company has ceased operations and has no assets. Any such determination shall take into consideration the following:

- (i) where the company has been deregistered, that it had no assets at the date of deregistration; and
- (ii) whether assets owned by the company prior to deregistration were legally disposed of. If not, the Commissioner should consider whether such assets would be recoverable by a liquidator; and
- (iii) that the company did cease to trade.

### **3.1.7 Deceased**

The Commissioner may write off an amount owing under a fine enforcement order where a fine defaulter is deceased.

## **3.2 Resumption of enforcement action where a fine is written off**

### **3.2.1 Resuming action**

Action to recover an amount owing under a fine enforcement order which has previously been written off in accordance with this policy may be resumed within five years from the determination of the write off where:

- (i) further fine enforcement order(s) is/are issued against a fine defaulter for an offence committed after the amount owing under the earlier order(s) had been written off;
- (ii) the whereabouts of a fine defaulter who was previously unable to be located (under the terms of 3.1) becomes known to the Commissioner; or
- (iii) the financial, medical or domestic circumstances of a fine defaulter substantially improves the capacity to pay.

A determination to resume enforcement action should take into consideration whether it is in the public interest to do so.

### **3.2.2 Incorrect, false or misleading applications**

Where an enforcement order has been written off and the Commissioner determines that the initial application was incorrect, false or misleading, the write off may become void and the fine(s) reinstated.

## **3.3 Applications**

An application seeking that an amount owing under an enforcement order be written-off, either in full or in part, may be made by:

- (i) a fine defaulter; or
- (ii) a fine defaulter's legal representative; or
- (iii) any other person authorised by a fine defaulter to do so.

## **3.4 Determining write offs**

A fine may be written off by the Commissioner, or a delegated member of staff of OSR.

Where multiple fines are written off for a fine defaulter under these guidelines by a delegated officer, the appropriate officer for the purpose of delegation shall be an officer with sufficient delegation to write off the total combined amount of the multiple fines.

Where a schedule of fines are written off under these guidelines by a delegated officer, the appropriate officer for the purpose of delegation shall be an officer with sufficient delegation to write off the highest combined amount for an individual fine defaulter within the schedule.

The Commissioner may approve business rules concerning practices around how a schedule of fines or multiple fines may be written off.

Where a determination is made in response to an application, the Commissioner must inform the applicant of the decision to grant or refuse to write off the amount owing.

## **3.5 Record of written off fines**

The Commissioner will retain details of any fines written off under these guidelines and of the reversal of any decision to write off fines. A summary of this information will be included in the annual report.

### **3.6 Partial write offs**

The Commissioner may determine to write off all or part of a fine, or all or part of a total amount owing by the fine defaulter.

Where a determination is made to write off a part of the amount owing, the remaining fine amounts may be subject to any enforcement action authorised under the Act.

A partial write-off may be approved conditionally on the fine defaulter meeting criteria set in respect of either the amount written off or the remaining outstanding fines.

### **3.7 Consistency with any other current guidelines**

The Commissioner may not write off any enforcement order if to do so would contravene any other Minister's Directions or Guidelines.

### **3.8 Commencement date**

These guidelines come into effect from the date of issue.

## 4. Related Policies and Documents

Issuer	Reference	Document Name
NSW Government	No 99 of 1996	<a href="#">Fines Act 1996</a>
NSW Treasury	<i>Public Finance and Audit Act 1983</i>	<i>Treasurer's Directions</i>

## 5. Document Control

### 5.1 Document Approval

Name & Position	Signature	Date
Dominic Perrottet Minister Department of Finance, Services and Property		

### 5.2 Document Version Control

Version	Status	Date	Prepared By	Comments
1.0	Draft	05/12/2011	R. Cant	2011 draft incorporated into DFS format
1.0.1	Draft	01/02/12	R. Cant	Feedback
1.0.2	Final	09/05/12	J. Ovenstone	Confirmed
2.0	Draft	15/04/2016	R. Cant	Update to reflect 2013 changes to the Act, changes business practices regarding aged debt and clarification of delegations where multiple fines are written off.
2.0.1	Final	20/12/2016	M. Baker	Clarification of delegations where fines for multiple fine defaulters are written off in a schedule.

### 5.3 Review Date

This policy will be reviewed in July 2018.

It may be reviewed earlier in response to post-implementation feedback from Business Units.