

Allowing Time To Pay on Unpaid Enforcement Orders



Office of
State Revenue
State Debt Recovery

Purpose

It is recognised that client's may be unable to pay outstanding enforcement orders in full by the due date.

The State Debt Recovery may approve further time to pay a fine in certain circumstances.

This document describes the SDR policy for approving time to pay (TTP).

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

A TTP is issued under Section 100 of the Fines Act 1996. Essentially, the legislation provides that the SDR may allow further time to pay a fine if it is satisfied that the application is genuine and it is expedient to do so.

A client may apply for time to pay:

- i) at any time after the issuing of an enforcement order up to the point at which a community service order is issued, or
- ii) if the client is in receipt of a government benefit, before an enforcement order is made.

Once approved, time to pay is usually in the form of an instalment arrangement, where a client is required to pay a set rate at regular intervals (eg \$50 per fortnight). Time to pay can also be in the form of an extension of the due date for payment.

It is the client's responsibility to arrange payment by the due dates to prevent further enforcement action. SDR may allow clients in receipt of a Government benefit to pay the instalments as a regular direct debit from their benefit.

Once a client is allowed time to pay, SDR will not commence further enforcement action, so long as payments are kept up to date. However, the Sheriff is not required to return any property seized under a property seizure order under Division 4 of the Act, and a charge on land created under that Division need not be cancelled, until the fine is paid.

If an instalment is not paid by the due date, SDR may cancel the TTP, the full overdue debt will become due and payable and further enforcement action may be taken.

A client may apply to SDR to amend a current TTP and SDR may amend or cancel a current TTP.

Policy

General principles of Time to Pay

The discretion to approve time to pay after an enforcement order is made rests at all times with SDR unless the Treasurer issues guidelines specifying otherwise.

Time to pay will be allowed only if it is expedient to do so; however, there is generally a presumption in favour of a client being approved time to pay where an application is made for the first time.

An application in a prescribed form may be required before considering whether to allow further time to pay.

A client may be asked to provide further documentation to substantiate a request for further time to pay based on limited means.

A decision on whether further time to pay may be allowed may take into account any or all of the following:

- the applicant's income;
- the applicant's expenditure;
- whether sufficient assets or financial reserves exist to enable payment of a debt without the need to enter into an instalment arrangement;
- the amount of the debt to be repaid;
- whether a previous time to pay order has not been complied with;
- the applicant's commitment to pay previous debts (whether or not by instalment).

Clients will be expected to repay an outstanding debt in the shortest time possible.

A TTP may be subject to conditions such as an up-front payment, a review period or the requirement to provide updated information at a particular date.

A TTP will be paid in fortnightly instalments unless otherwise directed by SDR.

A TTP may be amended where a client's financial circumstances change. The new terms may, but not necessarily, be proportionate to the change in financial circumstances.

A TTP may be amended to include new enforcement orders incurred by a client; however, this will be at the discretion of SDR and there may be conditions applied.

When negotiating either the payment of arrears on a TTP or a further TTP order after a default, the likely success of available enforcement options will be taken into account before approving a further time to pay.

Applications

A client seeking TTP may make an application:

- verbally via telephone, or
- electronically via an on line service or email, or
- in writing.

A TTP may be made over the telephone either in response to an inquiry from a client or as a result of an SDR officer contacting a client directly.

SDR may require a client to provide additional information to support an application (eg a centrelink income statement, bank statement).

A delegated officer will make a determination whether or not to approve a time to pay application. A decision can incorporate:

- the amounts to be paid each instalment
- the payment frequency
- an up-front payment
- a review date during the course of the TTP (to allow an update on the client's financial position).

Further applications

If a time to pay application is declined, or where a TTP is cancelled by SDR due to non-compliance, the client may make a further application.

Normally, an up-front payment will be required before further time to pay will be approved.

Lifting of RMS sanctions on application for time to pay

Where a client makes a time to pay application, and has not previously defaulted on a TTP, the client will be entitled to have sanctions lifted under the '6 consecutive payment rule' (see S.65(4A) of the Fines Act 1996).

Where a client makes a time to pay application, and has defaulted a previous TTP order which included some or all enforcement orders currently outstanding, the client will not be entitled to have sanctions lifted under the '6 consecutive payment rule' (see S.65(4A) of the Fines Act 1996).

A client may also have an application to lift sanctions considered under other grounds contained in the SDR policy on 'Lifting NSW Roads and Maritime Services sanctions prior to enforcement orders being paid in full'. An up-front payment may be required before a sanction lift is approved.

Adding further EOs to a TTP Order

Where a TTP exists, and a client requests further time to pay on an additional EO, the TTP may be rescheduled to include the additional EO.

The delegated officer making this decision may impose conditions on the adding of the additional EO, including:

- increasing the instalment amount or frequency of payment;
- requiring further or updated financial information substantiating that the client has insufficient means to repay the additional EO immediately;
- requiring an up-front payment before the EO is added;
- setting a review date during the course of the TTP (to allow an update on the client's financial position).

In exercising the discretion to add an additional EO to a current TTP, the number of previous occasions a client has applied to have further EOs added will be taken into consideration.

Additional EOs will not be added to a TTP where payments are in arrears. The current TTP will be closed in default and a new application will be required. The new application may be made verbally, electronically or in writing.

Arrears

A time to pay order will be considered to be in arrears if the payment of any scheduled instalment is not made by the date prescribed on the TTP.

If a TTP is in arrears, the TTP may be cancelled and further enforcement action, including RMS sanctions, applied.

This does not prevent the client from making further applications for TTP; however, the client's previous payment record will be a factor in the assessment of any future applications.

Review

Where SDR refuses to allow time to pay, or refuses a TTP application in the terms proposed by a client, the client may appeal the decision to the Fines Hardship Review Board.

Before a case is referred to the Hardship Review Board, a manager should review the case. The manager may reverse the original decision in favour of the client prior to any referral to the Fines Hardship Review Board.