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# Work and Development Order Guidelines 2012

## *Fines Act 1996 (NSW)*

These guidelines are issued by the Attorney General, in consultation with the Minister for Finance and Services, under section 99I of the *Fines Act 1996*. The State Debt Recovery Office (**SDRO**), approved organisations, health practitioners, and other people with functions under the Work and Development Order scheme must comply with these guidelines.

In the event of any inconsistency between these guidelines and the *Fines Act 1996*, the *Fines Act 1996* prevails.

## Essential Summary

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Work and Development Orders (**WDOs**) are orders, made by the SDRO, that allow eligible people to satisfy their fine debt through unpaid work or certain courses or treatment with approved organisations and health practitioners. WDOs are open to people who:

- have a mental illness,
- have an intellectual disability or cognitive impairment,
- have a serious addiction to drugs, alcohol or volatile substances,
- are homeless, or
- are experiencing acute economic hardship.

A WDO may only be made if the application is supported by an approved organisation, or in the case of mental health or medical treatment, a health practitioner qualified to provide that treatment. Approved organisations and health practitioners are generally responsible for determining that a person is eligible for the scheme. The content of the WDO is agreed between the individual client, their supporting organisation or health practitioner, and the SDRO.

These guidelines address the WDO application process (including proof of eligibility requirements), WDO activities, and cut-out rates. They also set out the criteria and process for becoming an approved organisation and enrolled health practitioner, and the obligations of approved organisations and health practitioners.

For further information on WDOs and these guidelines, contact the SDRO on [wodosdro@osr.nsw.gov.au](mailto:wodosdro@osr.nsw.gov.au) or visit the SDRO website <http://www.sdro.nsw.gov.au/>.

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# 1 Purpose

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The purpose of these guidelines is to assist the State Debt Recovery Office (**SDRO**), approved organisations, health practitioners and the public to understand and apply the provisions of the *Fines Act 1996* that deal with Work and Development Orders (**WDOs**).

The SDRO, approved organisations, health practitioners and other people with functions under the WDO scheme must comply with these guidelines.

The guidelines are intended to ensure consistency in decision-making, but also to provide sufficient flexibility to enable each WDO application to be considered on its merits.

# 2 Definitions

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Unless otherwise specified, the terms used in these guidelines have the same meaning as in the *Fines Act 1996*.

**Fine** includes both a court fine and a penalty notice.

**Fine debt** includes debt arising from both court fines and penalty notices.

# 3 What is a Work and Development Order?

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A WDO is an order made by the SDRO that requires a person to do any one or more of the following in order to satisfy all or part of their fine debt:

- (a) undertake unpaid work for, or on behalf of, an approved organisation,
- (b) undergo medical or mental health treatment in accordance with a health practitioner's treatment plan,
- (c) undertake an educational, vocational or life skills course,
- (d) undergo financial or other counselling,
- (e) undergo drug or alcohol treatment, or
- (f) undertake a mentoring program (this option is only available if the person is under 25 years of age).<sup>1</sup>

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<sup>1</sup> *Fines Act 1996*, s 99A.

## 4 Who is eligible for a WDO?

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A person is eligible for a WDO if he or she:

- has a mental illness,
- has an intellectual disability or cognitive impairment,
- is homeless,
- is experiencing acute economic hardship, or
- has a serious addiction to drugs, alcohol or volatile substances.<sup>2</sup>

Guidance on the meanings of these terms, and proof of eligibility requirements, are set out below in clause 5.

Both children and adults can apply for WDOs. People living inter-state (with NSW fine debt) can also apply for WDOs.

It is not necessary to prove that the person's disability, impairment, illness, homelessness or hardship contributed to the person incurring the fine or penalty notice. However, where an application is made on the grounds of intellectual disability, cognitive impairment, mental illness, personality disorder or serious addiction to drugs, alcohol or volatile substances, the application should indicate that, in the view of the approved person, the person's condition:

- has contributed or is contributing to the person's inability to pay the fine, or
- because of the person's condition, it is more appropriate for the person to undertake the work or activities proposed rather than pay the fine.

The SDRO can only make a WDO in respect of a person if:

- An enforcement order has been made against the person in respect of the fine. (A person can apply for an enforcement order for the purposes of applying for a WDO. No enforcement costs apply in these circumstances).
- A community service order is not in force against the person in respect of the fine.<sup>3</sup>
- The person's application is supported by an approved organisation, or, in the case of medical or mental health treatment, a health practitioner.

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<sup>2</sup> *Fines Act 1996*, s 99B(1)(b).

<sup>3</sup> *Fines Act 1996*, s 99B.

## 5 Making an application for a WDO

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### 5.1 General

In general, approved organisations and health practitioners are responsible for assessing whether a person is eligible for the WDO scheme. Approved organisations and health practitioners must keep documentary proof, in accordance with these guidelines, to support their assessment of a person's eligibility. **This documentation (as well as other WDO records) may be audited for the purposes of ensuring compliance with the requirements of the WDO scheme (including eligibility criteria and proof of eligibility).**

The person providing the supporting documentation (proof of eligibility) set out below can be the health practitioner or approved organisation supporting the WDO application, provided they have the relevant expertise.

Once the supporting organisation or health practitioner has assessed that a person is eligible, an application for a WDO may be submitted to the SDRO.

A standard WDO application form is available from the SDRO – either at [www.sdoro.nsw.gov.au](http://www.sdoro.nsw.gov.au) or by emailing [wdosdro@osr.nsw.gov.au](mailto:wdosdro@osr.nsw.gov.au). The application must set out:

- (a) the grounds for requesting the order,
- (b) the proposed activities to be carried out under the order, and
- (c) a proposed time for the completion of those activities.<sup>4</sup>

The application must include:

- proof of identity or other documentation establishing the identity of the applicant (including drivers licence number, if any)
- a list of penalty notice numbers or enforcement order numbers to which the WDO will relate (if known)
- applicant details including date of birth and gender
- address and contact details for the applicant (this may be care of the supporting organisation or health practitioner)
- if the application is made on behalf of the applicant, evidence of the applicant's agreement to the application and terms of the application
- how the proposed activities would be beneficial to the applicant

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<sup>4</sup> *Fines Act 1996*, s 99B.

- a declaration that a ‘Working with Children check’ has been undertaken for
  - (i) the applicant, if the proposed activities involve child-related activities or
  - (ii) person(s) responsible for the supervision of proposed activities under the WDO, if the applicant is under 18 years of age.

The application should indicate (for SDRO information) how the applicant intends to deal with any fine or penalty notice debts not covered by the proposed WDO. A person may apply for a partial write-off or for a time to pay arrangement in conjunction with a WDO.

A WDO should clearly reflect an applicant’s capabilities and personal circumstances. It should not be too onerous for the applicant, having regard to their age and other personal circumstances.

Where an approved organisation is supporting the application, the application must include:

- (a) the name, contact details and endorsement of the organisational representative(s) certifying the application, and (if different),
- (b) the identity and contact details of person(s) responsible for supervision of the proposed activities under the WDO.

Where a health practitioner is supporting the application, the practitioner must also supply an enrolment form (see clause 12.1 below), if they have not already enrolled.

If a fraudulent or false WDO application (or a fraudulent report on a WDO) is made, the SDRO may revoke a WDO and recommence enforcement action. A person who makes a false or misleading statement in a WDO application or report may also be liable to criminal prosecution under the *Crimes Act 1900*.

## **5.2 Mental illness – definition and proof**

### **Definition**

Mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions,
- (b) hallucinations,
- (c) serious disorder of thought form,
- (d) a severe disturbance of mood,
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in points (a)-(d).<sup>5</sup>

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<sup>5</sup> This definition is taken from s 4 of the *Mental Health Act 2007* (NSW).

Some common types of mental illness include schizophrenia, psychosis, bipolar disorder and serious depression or anxiety.

However, for the purposes of the WDO scheme, a personality disorder is also considered to be a mental illness. Personality disorder means an extreme and maladaptive pattern of thinking and behaviour that causes disruption to a person's life. Examples of personality disorders include antisocial personality disorder and borderline personality disorder.

### **Proof**

Where eligibility for a WDO is claimed on the ground of mental illness, the supporting organisation or health practitioner must keep a letter or other documentation from:

- the applicant's treating doctor, psychiatrist, registered psychologist, or mental health nurse, or
- a government agency or non-government organisation with professionals qualified to make mental health assessments, including, but not limited to: Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, and the Department of Family and Community Services, or
- Centrelink, if the applicant is in receipt of a full or partial disability pension (such as a Job Capacity Assessment or other report).

The supporting documentation should be no older than 6 months from the date of the application, and should explain:

- the diagnosis, including the nature, severity and effects of the illness/condition, and
- how long the applicant has had the illness/condition.

The supporting organisation or health practitioner should also keep documentation that explains:

- how the applicant's mental illness has contributed or is contributing to the inability to pay the fine, or
- why it is more appropriate for the applicant to undertake the proposed work or activities rather than pay the fine.

### 5.3 Intellectual disability and cognitive impairment – definitions and proof

#### Definition

A person has an intellectual disability where that disability:

- (a) is attributable to an intellectual impairment, and
- (b) is permanent or likely to be permanent, and
- (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.<sup>6</sup>

Cognitive impairment incorporates a wider range of disabilities than intellectual disability and includes a disability which:

- (a) is attributable to impaired brain functioning that can be associated with many diagnoses that are present at birth or acquired throughout a person's life span, and
- (b) is permanent or likely to be permanent, and
- (c) results in a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care.

Examples of cognitive impairment include a developmental disorder (such as autistic spectrum disorder and cerebral palsy), neurological disorder, dementia, brain injury (including from trauma or as a result of substance abuse), or Alzheimer's disease.<sup>7</sup>

#### Proof

Where eligibility for a WDO is claimed on the grounds of intellectual disability or cognitive impairment, the supporting organisation must keep one of the following:

- if the applicant is in receipt of a full or partial disability pension, a Job Capacity Assessment or other report from Centrelink describing the applicant's disability or impairment, or
- if the applicant has been declared eligible for the services of Ageing, Disability and Home Care (ADHC), proof of this declaration, or
- a letter or other documentation from any of the following clearly describing the person's disability or impairment:
  - the applicant's general practitioner,
  - the applicant's school teacher or Principal, or an officer in the Department of Education and Communities,

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<sup>6</sup> This definition is adapted from the definition of the intellectual disability target group in section 5 of the *Disability Services Act 1993* (NSW).

<sup>7</sup> This list of examples is adapted from the definition of cognitive impairment in s61H(1A) of the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* (NSW).

- a government agency or non-government organisation with experience working with people with intellectual disabilities or cognitive impairments, including, but not limited to Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, the Department of Family and Community Services, or a relevant legal service or a disability employment network provider.

The supporting organisation or health practitioner should also keep documentation that explains:

- (a) how the applicant's intellectual disability or cognitive impairment has contributed or is contributing to the person's inability to pay the fine, or
- (b) why it is more appropriate for the applicant to undertake the work or activities proposed rather than pay the fine.

## **5.4 Homelessness – definition and proof**

### **Definition**

A person is considered homeless if they are:

- a) Without conventional accommodation – for instance, sleeping in parks or on the street, squatting, living in cars or in improvised dwellings, or
- b) Moving from one form of temporary accommodation to another – for example, refuges, emergency hostel accommodation, or temporary space in the homes of family and friends, or
- c) Living in temporary accommodation due to domestic violence, unsafe living conditions or inability to afford other housing, or
- d) Living in a caravan park due to their inability to access other accommodation, or
- e) Living in boarding houses on a medium to long-term basis.<sup>8</sup>

### **Proof**

Where eligibility for a WDO is claimed on the ground of homelessness, the supporting organisation must keep a letter or other documentation from:

- the applicant's lawyer, specialist service provider or case worker, or
- a government agency or non-government organisation with experience working with people experiencing homelessness, including but not limited to Juvenile Justice, Corrective Services NSW, NSW Trustee and Guardian, the Department of Family and Community Services or youth services

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<sup>8</sup> This is based on the Chamberlain and McKenzie definition of homelessness, which is the most commonly used definition in Australia.

clearly explaining:

- the applicant's current living arrangements (where possible),
- the type of homelessness the applicant is experiencing (with reference to the above definition), and
- how long the applicant has been homeless.

Any supporting documentation should be dated within 3 months from the date of the application.

## 5.5 Acute economic hardship – definition and proof

### Definition

#### 5.5.1 Clients on Centrelink benefits

A person will be deemed to be in acute economic hardship if he or she is in receipt of the following benefits:

- Newstart Allowance
- Youth Allowance
- Parenting Payment
- Disability Pension
- Carer's Payment
- Sickness Allowance
- Age Pension; or
- Department of Veterans Affairs benefits.

#### 5.5.2 Other clients

If a person is not in receipt of the above Centrelink benefits, a person will be taken to be in acute economic hardship if they are a member of a household that has a weekly/monthly household income below the following thresholds (before tax):

Household type	\$ per month	\$ per week
Single	\$2,025	\$ 466
Single + 1 child	\$ 2,430	\$ 559
Single + 2 children	\$ 2,700	\$ 621
Single + 3 children	\$ 2,970	\$ 684
Single + 4 children	\$ 3,240	\$ 746
Couple	\$ 2,565	\$ 590
Couple + 1 child	\$2,970	\$ 684
Couple + 2 children	\$ 3,240	\$ 746
Couple + 3 children	\$ 3,510	\$ 808
Couple + 4 children	\$3,780	\$ 870
Each additional child	\$270	\$ 62
Each additional adult	\$540	\$ 124

If a person pays child support, the amount of child support paid each week or month should be deducted from his or her income (before tax). The person's income after child support has been deducted should then be compared with the relevant threshold for the household type in which he or she lives.

### 5.5.3 Exceptions

If a person is a member of a household with income above these thresholds, but their supporting organisation is of the view that the person is nonetheless in acute economic hardship (for instance, because the person has significant and unavoidable expenses such as large medical bills, or because the person does not have access to the household income), an application may be made to the SDRO to confirm eligibility outside the usual criteria.

#### **Proof**

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.1, the supporting organisation must keep documentary evidence, dated within 4 weeks from the date of the application, that the person is in receipt of one of the listed Centrelink or Department of Veteran Affairs benefits.

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.2, the supporting organisation must keep documentary evidence of the person's household income (if any) from within 3 months of the date of the application, such as payslips and bank statements.

Where eligibility is claimed on the grounds of acute economic hardship as defined in 5.5.2 and the person claims to live in a household with dependants, the supporting organisation must also keep documentary evidence to this effect. Documentary evidence might include a copy of the person's Medicare card, listing his or her child/ren, copies of the birth certificates of the person's child/ren, Community Services documentation, or Centrelink documentation.

If the person claims to pay child support, the supporting organisation must keep documentary evidence of these payments (a monthly statement from the Child Support Agency will suffice).

Where a person is claiming acute economic hardship under 5.5.3 (Exceptions), a full statement of financial circumstances (which can be found at [www.sdoro.nsw.gov.au](http://www.sdoro.nsw.gov.au)) must be submitted to the SDRO (together with supporting documentation and details of any extenuating circumstances or hardship suffered by the person).

## 5.6 Serious addiction to drugs, alcohol or volatile substances

### Definition

A person is considered to have a serious addiction to drugs, alcohol or volatile substances if he or she has a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring any time in the same 12-month period:

1. Tolerance, as defined by either of the following:
  - (a) A need for markedly increased amounts of the substance to achieve intoxication or the desired effect or
  - (b) Markedly diminished effect with continued use of the same amount of the substance.
2. Withdrawal, as manifested by either of the following:
  - (a) The characteristic withdrawal syndrome for the substance or
  - (b) The same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.
3. The substance is often taken in larger amounts or over a longer period than intended.
4. There is a persistent desire or unsuccessful efforts to cut down or control substance use.
5. A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
6. Important social, occupational, or recreational activities are given up or reduced because of substance use.
7. The substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance (for example, current cocaine use despite recognition of cocaine-induced depression or continued drinking despite recognition that an ulcer was made worse by alcohol consumption).<sup>9</sup>

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<sup>9</sup> Based on the definition of substance dependence in American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders: DSM-IV. 4<sup>th</sup> edition, Washington D.C: American Psychiatric Association (2000).

## **Proof**

Where eligibility is claimed on the ground of a serious addiction to drugs, alcohol or volatile substances, the supporting organisation must keep a letter or other documentation from one of the following:

- the applicant's treating doctor, psychiatrist, registered psychologist, nurse working in the field of drug and alcohol addiction, or social worker
- drug and alcohol case worker or counsellor
- youth service case worker or counsellor
- residential rehabilitation service provider or
- other government agency or non-government organisation with expertise in working with people with serious addictions to drugs, alcohol or volatile substances, including, but not limited to Juvenile Justice NSW, Corrective Services NSW, NSW Trustee and Guardian, or the Department of Family and Community Services.

Supporting documentation should be no older than 6 months from the date of the application, and should explain:

- the nature, severity and effects of the addiction and
- how long the applicant has had the addiction.

The supporting organisation should also keep documentation that explains:

- how the applicant's addiction has contributed, or is contributing to, the inability to pay the fine, or
- why it is more appropriate for the applicant to undertake the proposed work or activities rather than pay the fine.

## **5.7 Applications where supporting documentation is not available**

In the event that a supporting organisation or health practitioner is of the view that a person is eligible for the WDO scheme, but the client does not have the supporting documentation listed in clauses 5.1 – 5.6 above, the organisation or health practitioner may make an application to the SDRO to waive the requirements in these Guidelines and endorse their assessment of the person's eligibility. The SDRO will waive these requirements in exceptional circumstances, where it is satisfied that there are sound reasons why the required documentation is not available.

## 6 WDO activities

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### 6.1 General

As noted above, a person can undertake one or more of the following activities to satisfy their fine debt under a WDO:

- (a) unpaid work with or on behalf of an approved organisation
- (b) medical or mental health treatment in accordance with a health practitioner's treatment plan
- (c) an educational, vocational or life skills course
- (d) financial or other counselling
- (e) drug or alcohol treatment
- (f) a mentoring program (this option is only available if the person is under 25 years of age).<sup>10</sup>

However, if a person is eligible for a WDO solely on the ground that they have a serious addiction to drugs, alcohol or volatile substances, he or she may only undertake drug or alcohol treatment and/or counselling as their WDO activity.

It is the responsibility of the supporting organisation or health practitioner (not the SDRO) to ensure that the activities proposed to be undertaken in a WDO are suitable and appropriate for the client.

### 6.2 Unpaid work with or on behalf of an approved organisation

There are many forms of unpaid work that may be undertaken with or on behalf of an approved organisation. Examples of unpaid work include gardening, cooking, property maintenance, cleaning and assistance with administrative duties.

### 6.3 Medical or mental health treatment

Medical or mental health treatment must be undertaken in accordance with a health practitioner's treatment plan (that is, treatment that is prescribed or recommended by a health practitioner). Such a plan may encompass pharmacotherapy, as well as face-to-face sessions with a psychiatrist or psychologist.

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<sup>10</sup> *Fines Act 1996*, s 99A.

## **6.4 Educational, vocational and life skills courses**

Educational courses include courses undertaken at university, TAFE or other educational institutions.

Vocational courses encompass a wide range of courses that are designed to assist people enter or participate in the workforce. They include courses undertaken at TAFE and university. They also include courses undertaken in community or private colleges, and activities undertaken with a job service provider – for instance, a course on computer skills.

Life skills courses foster the personal, social and practical skills that help people function in society, on an independent basis.<sup>11</sup> For the purposes of the WDO scheme, they include courses that focus on practical skills, such as cooking and driving, as well as courses that focus on psycho-social skills, such as problem-solving, anger management, conflict resolution and parenting.

The three types of courses listed above are not mutually exclusive. For instance, a course may be considered both educational and vocational and is still considered to be one course.

## **6.5 Financial or other counselling**

Counselling is a professional activity, in which the counsellor or therapist helps the client explore and resolve issues of an interpersonal or personal nature.<sup>12</sup>

Financial counselling specifically involves ‘undertaking financial analyses, generation of options and advice about debt issues and supporting the client in negotiation with creditors or advocating on their behalf’.<sup>13</sup> A financial counsellor also seeks to prevent future debt issues through ‘budgeting strategies, increased access to income and adjustment to lifestyle’.

Other forms of counselling may be directed at improving a client’s mental health, or resolving their emotional or behavioural issues. Counselling might also take the form of family counselling, when a whole family undertakes counselling to improve family communication and relationships, solve a problem, or adjust to a new situation. Group counselling, such as domestic violence group sessions for mothers, may also be counted.

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<sup>11</sup> This definition is based on the definitions of life skills given by the International Bureau of Education.

<sup>12</sup> This definition is based on the definition of counselling adopted by the Psychotherapy and Counselling Federation of Australia.

<sup>13</sup> Consumer Affairs Victoria Financial Counselling Services (funding and service agreements).

A client's attendance at case management meetings with their social worker or other case worker can be counted as counselling for the purposes of a WDO.

## **6.6 Drug or alcohol treatment**

Drug or alcohol treatment aims to assist people to overcome dependencies on, or misuse of, alcohol and/or other drugs. Various interventions may be used, including detoxification, medication or pharmacotherapy, counselling, behavioural therapy, group therapy, and 12-step programs. Such treatment may, but need not, occur in a residential facility.

## **6.7 A mentoring program (for people under 25)**

A broad definition of 'mentoring' is a 'mutually beneficial relationship that involves a more experienced person helping a less experienced person to achieve their goals'.<sup>14</sup> A mentoring program establishes this relationship in a semi-formal, structured way.

Mentoring programs can be offered to a range of young people, including school or university students, young employees, or ex-prisoners.

## **6.8 Variation or addition to WDO activities**

A variation or addition to the specific activities to be undertaken as part of a WDO will be permitted, provided that:

- a) the organisation or health practitioner has approval to provide or supervise that kind of activity, and
- b) the supporting organisation or health practitioner notifies the SDRO.

The variation or addition will be deemed approved if they do not hear from the SDRO within a week (for email or telephone notification), or two weeks (for notification by post).

## **6.9 Specific activities**

The following activities may be legitimately included in a WDO:

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<sup>14</sup> Australian Government (2010) *Mentoring*: [http://www.dpc.nsw.gov.au/public\\_employment/working\\_in\\_the\\_nsw\\_public\\_sector/mentoring](http://www.dpc.nsw.gov.au/public_employment/working_in_the_nsw_public_sector/mentoring); NSW Department of Premier and Cabinet (2010) *Mentoring*: [http://www.dpc.nsw.gov.au/public\\_employment/working\\_in\\_the\\_nsw\\_public\\_sector/mentoring](http://www.dpc.nsw.gov.au/public_employment/working_in_the_nsw_public_sector/mentoring)

- Voluntary activities undertaken while in gaol, juvenile detention or on community supervision (provided the prisoner or detainee meets the eligibility criteria for a WDO).
- Participation in voluntary court-diversion programs, such as the MERIT (Magistrates Early Referral into Treatment) and CREDIT (Court Referral of Eligible Defendants Into Treatment) programs, or the Youth Drug and Alcohol Court.

However, in general the following activities may not be counted in a WDO:

- Activities that are specifically ordered by a court
- Mutual obligation activities undertaken for the purposes of Centrelink benefits
- Attendance at school during normal school hours for children of compulsory school age
- Activities undertaken for the purposes of a traineeship or an apprenticeship (including educational activities that are required by the traineeship or apprenticeship, such as attendance at TAFE).

However, the SDRO, in consultation with the Department of Attorney General and Justice (**DAGJ**), may allow a departure from these general rules in exceptional circumstances. An exception will be granted having regard to the following factors:

- The applicant suffers particular hardship, and
- Permitting the applicant to include the relevant activity in his or her WDO would bring about compliance with, or engagement in, the activity that would not otherwise occur, and
- Significant benefits are likely to flow if the applicant participates in the relevant activity.

## **7 Rate at which WDO satisfies fine debt**

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The following cut-out rates are intended to be a guide to ensure consistency and equity in WDOs made by SDRO. While applications should generally be prepared on the basis of these rates, it is acknowledged that the individual circumstances of applicants are likely to vary. Applications for WDOs should be made having regard to the age, needs, family obligations, capacity and overall situation of the applicant and the potential benefit of the proposed activities for the applicant.

Regard should also be had to any legal obligations on the applicant (such as court ordered programs, or statutory obligations to attend school) which may limit their capacity to perform activities under a WDO. If this necessitates a departure from the

cut-out rates or timeframes below, the application should outline why a different arrangement is justified.

A WDO application may propose a combination of activities (for instance, mental health treatment combined with a living skills course). However, the maximum overall amount of fine debt that can be satisfied through a WDO each month is \$1000.

<b>Activity</b>	<b>Cut out rate</b>
Unpaid work for or on behalf of an approved organisation	\$30 per hour worked. Breaks are not to be counted.
Medical or mental health treatment in accordance with a practitioner's treatment plan	\$1000 per month for full compliance (or a proportion for partial compliance).
Educational, vocational or life skills course	\$50 per hour or \$350 per full (7 hour) day, to a maximum of \$1000 per month.
Financial or other counselling (including attending case management meetings)	\$50 per hour or \$350 per full (7 hour) day, to a maximum of \$1000 of fine debt per month.
Drug or alcohol treatment	\$1000 per month for full compliance (or a proportion for partial compliance).
Participation (as a mentee) in a mentoring program	\$1000 per month for full compliance (or a proportion for partial compliance).

## **8 Content of a WDO**

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The terms of the WDO must be agreed between the SDRO, the applicant, and the approved organisation or health practitioner supporting the application for the order.

A WDO must set out:

- (a) the value of the activities that are to be undertaken under the order;
- (b) the nature of the activities that are required under the order; and
- (c) the penalty notice or enforcement orders that will be satisfied or partially satisfied by completion of the order.

## 9 Effect of a WDO

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No enforcement action is to be taken against a person, in respect of a fine to which a WDO relates, while a WDO is active. When a WDO is in force, any driver licence or vehicle sanctions or other enforcement action imposed on that person's licence due to fine default are to be lifted.

Note that the stay of enforcement action will only apply in relation to existing fine and penalty notice debts. Action to recover new fines referred to SDRO after the WDO is made will not be automatically stayed. The SDRO will need to be advised of new debts in order that enforcement action can be stayed for these also.

## 10 Variation and revocation of WDOs

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The SDRO may vary and / or revoke a WDO in any of the following circumstances:

- (a) If requested to do so by or on behalf of the person subject to the WDO. For instance, the SDRO may vary a WDO to incorporate additional fines incurred by the person, or to incorporate new or different activities.
- (b) If a WDO application or a report on a WDO contains false or misleading information.
- (c) If the SDRO is of the opinion that the person subject to the WDO is not eligible, or is no longer eligible, for the scheme.
- (d) If the approved person supervising the WDO is unable to continue to supervise the order, is in breach of their obligations or is no longer approved or enrolled to participate in the WDO scheme.
- (e) if the SDRO is satisfied that the person subject to the WDO has failed, without reasonable excuse, to comply with the WDO. However, the SDRO cannot vary and / or revoke the WDO on this ground unless it has taken reasonable steps to consult with the person and each approved organisation or health practitioner supporting the order.<sup>15</sup>

Six months after a WDO has been approved, the supporting organisation or health practitioners should notify the SDRO if there has been a material change in their client's circumstances. This is to allow the SDRO the opportunity to assess the client's situation and discuss other fine payment or mitigation options with the client and his/her sponsor if it is of the view that the client is no longer eligible for a WDO.

Before making a variation and / or revocation, the SDRO will write to the client and the approved organisation or health practitioner supporting the order setting out the

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<sup>15</sup> *Fines Act 1996, s99C*

reasons for the proposed variation and revocation. The client will be given a reasonable period to contest the matter (no less than four weeks) before the SDRO can proceed to vary and / or revoke the WDO.

If the SDRO varies or revokes a WDO it will advise the approved organisation or supporting health practitioner of the revocation or variation as soon as possible.

In circumstances where a WDO application has been revoked because of false or misleading information, the WDO may be deemed invalid and all fine debt reinstated.

## 11 Completing a WDO

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On successful completion of a WDO, the fine(s) to which the order relates is taken to be satisfied at the rate set out in the order.<sup>16</sup>

Partial completion of a WDO will result in only part satisfaction of the fine(s) to which the order relates, at the rate set out in the order.<sup>17</sup>

If a person has a fine debt after a WDO has been closed, the person should enter into arrangements with the SDRO to satisfy that debt. Otherwise the SDRO may recommence enforcement action under the *Fines Act 1996* to recover that debt.

## 12 Approved persons

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### 12.1 Health practitioners

For the purposes of a WDO, health practitioner means a:

- (a) registered medical practitioner, or
- (b) registered psychologist, or
- (c) nurse within the meaning of the *Nurses and Midwives Act 1991*.<sup>18</sup>

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<sup>16</sup> *Fines Act 1996*, s99E(1)

<sup>17</sup> *Fines Act 1996*, s99E(2)

<sup>18</sup> *Fines Act 1996*, s99A

Any health practitioner qualified to provide medical or mental health treatment can enrol to support applications for treatment to be undertaken under a WDO, and supervise that treatment.<sup>19</sup>

Enrolment may be sought at the same time that the application for a WDO is submitted. To be enrolled, the practitioner must

- (a) provide documentary evidence of their registration as a health practitioner; and
- (b) agree to oversee an eligible person's participation under the proposed WDO, on the following conditions:
  - to provide monthly reports on the WDO to SDRO, as set out in 13.2 below,
  - to report any non-compliance with the WDO to SDRO,
  - to notify the eligible person if the WDO is revoked by SDRO,
  - to comply with requirements for storage of and access to WDO records, as set out in 13.1 below, and
  - to have a complaints handling procedure in place.

The health practitioner should also maintain evidence of their ongoing registration as a health practitioner.

## **12.2 Organisations**

The Director General of DAGJ approves organisations to support and supervise WDOs. To be approved, the organisation must meet the following criteria:

- be a non-profit organisation with an ABN, a government agency, or a statutory body representing the Crown,
- have current public liability and other appropriate insurance covering its activities (for instance, if providing counselling, medical or mental health treatment, appropriate professional indemnity insurance cover is required),
- have appropriately trained or accredited staff, either for working with the target group for WDOs, or for providing the treatment or activities which will be undertaken as part of the WDO. Approval will only be given to support applications within the organisation's areas of expertise,
- have established OH&S policy and procedures, and
- if previously government funded, have complied with the terms of that funding and any performance agreement. If no government funding has been received, attempts will be made to verify the organisation's

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<sup>19</sup> *Fines Act 1996*, s99A

accountability, integrity and good governance through other means (for instance, through checks with the organisation's auditors, or other people who have worked with the organisation and/or its employees).

Government agencies need only show that they have appropriately trained or accredited staff, either for working with the target group for WDOs, or for providing the treatment or activities which will be undertaken as part of the WDO. The other criteria are deemed to be satisfied.

Inter-state organisations (i.e. outside NSW) may be approved to participate, provided they meet the eligibility criteria outlined above.

### **12.3 Process for becoming an approved organisation**

The application must stipulate the client group with which the organisation works. The application should also set out the treatment or activities that the organisation can:

- (a) provide directly to eligible people undertaking WDOs, and/or
- (b) refer eligible people to undertake with other service providers, while it provides case management.

The application must provide the name and contact details of the organisation's nominated representative(s) for the purposes of the WDO scheme.

The application must state that the organisation agrees to:

- (a) comply with reporting requirements as set out in clause 13.2 below,
- (b) comply with minimum record keeping requirements as set out in 13.1 below.  
The record keeping requirements include privacy requirements,
- (c) be subject to independent auditing,
- (d) have a complaints procedure in place for people subject to WDOs.

An organisation may apply to vary the scope or nature of its approval. Variations will be granted by the Assistant Director General of DAGJ if the organisation has the same ABN, appropriate insurance, OH&S procedures, and suitably trained staff for any additional activities it is seeking to provide.

### **12.4 Revocation of enrolment or approval**

If an approved organisation or enrolled health practitioner fails seriously or repeatedly to comply with:

- their conditions of enrolment or approval, or
- their obligations under these guidelines or the *Fines Act 1996*

the SDRO may refuse to approve any applications for a WDO which are supported by that practitioner/approved organisation.

DAGJ and the SDRO may also revoke the health practitioner's enrolment/the organisation's approval to participate in the WDO scheme.

When deciding whether to revoke the enrolment of a health practitioner or the approval of an organisation to support WDO applications, the SDRO and DAGJ will afford the organisation or practitioner procedural fairness, and may consult with representatives from other NSW Government agencies as appropriate

## **13 Record-keeping and reporting requirements**

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### **13.1 Record-keeping requirements**

Approved organisations and health practitioners must keep WDO records containing the following information:

- Documentation to support their assessment of client eligibility,
- Copies of all WDO applications made to SDRO,
- A copy of the WDO and / or any correspondence from SDRO declining to issue an order,
- Documentation showing the level of compliance with the WDO (this may include: hours or days of attendance or participation, completion of any assessments, compliance with any course of treatment).

#### Storage of and access to WDO records

WDO records must be held securely, either as a hardcopy in a lockable cabinet or as electronic copies on a password protected computer.

Staff are to treat WDO records as confidential.

On request, representatives of the SDRO and DAGJ are to be provided with copies of the WDO records, subject to reasonable notice being given to the approved organisation or health practitioner.

Independent auditors ensuring the integrity of the WDO scheme are to be provided with copies of the WDO records, provided reasonable notice is given to the approved organisation or health practitioner.

Approved organisations and health practitioners are to provide copies of documentation relating to their WDO, in response to reasonable requests by the person, their nominated carer, or their lawyer.

## 13.2 Reporting requirements

Approved organisations and health practitioners are required to report to the SDRO monthly, on the progress of each active WDO under their supervision. These reports must detail the number of hours/days or months of activities deemed satisfactorily completed by clients (or conversely where no activities have been completed for that month).

Approved organisations and health practitioners must report to the SDRO as soon as possible within seven days following the successful completion of a WDO. At this time, the client should indicate how they propose to address any outstanding amount of fines which were not subject to the WDO.

## 14 Document history

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Version	Date	Reason for Amendment
1	1/07/2009	-
2		To implement recommendations made by the evaluation of the WDO pilot

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## 15 Approval by Attorney General

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(Greg Smith)