

FACT SHEET



IMPORTANT – This Document only provides general information.

It is not intended to be a substitute for you getting your own specific legal advice.

Fines - What can be done about them?

If a person with intellectual disability has accumulated fines they can't pay, or they are accumulating fines for behaviour attributable to their disability (e.g. forgetting to take their monthly train pass) or there are grounds to appeal a fine (e.g. a good explanation, harsh or unfair enforcement practices or targeting of a person 'who sticks out'), there are practical things they and their advocates can do.

Is it a Court fine or a Penalty Notice?

There are two types of fines – a Court fine and a Penalty Notice. Different rules apply to each of them at different stages in the process.

If a person is found guilty in Court or they don't turn up to Court they may get a sentence/penalty that includes a monetary fine. The Court's Registry receives payments for Court fines.

Penalty Notices, on the other hand, are what a person gets when 'they get a ticket', an on-the-spot fine or infringement notice. They include traffic tickets, parking fines, speeding fines, travelling on a train without a valid ticket, littering and not wearing a helmet when cycling. The Infringement Processing Bureau (IPB) receives payments for Penalty Notices.

If a Penalty Notice or Court fine is not paid in time then it will be referred to the State Debt Recovery Office (SDRO). The SDRO converts them to Enforcement Orders. The SDRO is then responsible for collecting and enforcing payment of these fines. The SDRO can communicate with the Roads and Traffic Authority (RTA) to cancel a person's drivers' licence because of unpaid fines.

What can a person do about a Penalty Notice?

They can:

1. pay the total fine amount on the Penalty Notice (within the time permitted – 21 days; then IPB will send notice with extra 28 days)
2. pay the fine by instalments (by filling out a Time to Pay form)
3. write to the IPB notifying them of special or extenuating circumstances and asking them if they will withdraw the fine
4. elect to contest it in the Local Court
5. ignore it

An advocate can assist, particularly in options 2 and 3.

- ✓ Option 2. involves filling out the form with the person
- ✓ Option 3. involves writing a letter explaining the person's circumstances of disadvantage, financial position, disability and mitigating reasons for the circumstances that gave rise to the fine in the first place
- ✓ Option 4., the person should talk with a solicitor before they elect to proceed to Court

If the Penalty Notice goes on to the SDRO and becomes an Enforcement Order, then there are different options a person can take, explained below.

If a person ignores a fine and becomes a 'fine defaulter', a Court can order the person to carry out a Community Service Order.

What can a person do about a Court fine?

They can:

1. pay the total Court fine amount (within the time permitted – 28 days; they can go to the Local Court Registry to request an extension)
2. pay the fine by instalments (by going to the Local Court Registry and filling out a form)
3. appeal to the District Court if they think they are not guilty of the offence or the penalty (fine) is too severe
4. if they were convicted or sentenced in the Local Court in their absence less than 2 years ago, they can apply to the Local Court for an annulment – if successful, the offence comes before the court again
5. ignore it

An advocate can assist, particularly in options 1 and 2.

- ✓ Options 1. and 2. involve filling out forms with the person
- ✓ Options 3. And 4., the person should talk with a solicitor before they elect to proceed with an appeal or an annulment application

Even if the Court fine goes on to the SDRO and becomes an Enforcement Order, then the only way to have it dealt with (other than ignoring it or paying it) is to choose option 3. or 4. (if the person is still in time). There is much less leeway to informally appeal and resolve Court fines.

If a person ignores a fine and becomes a 'fine defaulter', a Court can order the person to carry out a Community Service Order.

What can a person do if a Penalty Notice has gone to the SDRO?

When a Penalty Notice goes to the SDRO, it becomes a Penalty Notice enforcement order. A person can make an application to the SDRO to have a Penalty Notice enforcement order or orders written off. The application should include:

- name, date of birth, address, licence number (if applicable)
- enforcement order number(s)
- the reasons why you are asking for the order(s) to be written off (e.g. there may be an argument the person didn't do it; financial hardship; illness; disability; homelessness; accident, death or misadventure)

The SDRO has a Hardship Review Board that meets periodically to review these applications. If a person is knocked back by the Board and they are in exceptionally disadvantaged circumstances, you should refer them to the Intellectual Disability Rights Service (IDRS) as we have special standing with SDRO and we can review and re-submit the application.

Informal arrangements with ticket-issuing authorities

In some cases where a person with intellectual disability is continually being fined for the same or similar minor infringements and the reason is linked directly to their disability, the person, their family and/or an advocate may be able to work out an arrangement with the ticket-issuing authority to break this cycle.

IDRS has had some success in working out an informal arrangement with RailCorp for a young man with intellectual disability who kept getting caught on the train without his ticket. It turned out that each month he bought a monthly train pass, but would forget to take it with him. An arrangement was made that whenever he received a

Penalty Notice for the trains, his mother would call an appointed person at RailCorp, send in a copy of the Notice and a copy of the valid monthly ticket he had, and RailCorp would check it and write it off.

Work and Development Orders (WDOs)

Later this year the NSW Attorney-General will unveil a two year trial of the new Work and Development Orders (WDOs). The scheme is described as a 'fine mitigation option' and it is meant to offer a more meaningful response than a monetary penalty for offending by vulnerable groups.

At any time after an enforcement order has been made by the SDRO a fine defaulter who is homeless, has a mental illness, has an intellectual disability or other cognitive impairment, or who is otherwise experiencing acute economic hardship may apply to the SDRO for a WDO. A WDO will require a person to undertake:

- ✓ unpaid work for an approved organization
- ✓ mental health treatment or other medical treatment
- ✓ educational, vocational or life skills course
- ✓ disability case management
- ✓ financial or other counseling
- ✓ drug or alcohol treatment
- ✓ mentoring program (for under 25s)
- ✓ any combination of the above.

Effectively, a WDO is a way to 'pay off' your fine by doing unpaid work, engaging mental health treatment, doing counselling, etc. It remains to be seen how and whether WDOs will work and their benefits or otherwise to people with intellectual disability.