Minister for Finance and Small Business Guidelines

50% Reduction of a penalty notice amount

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1 Definitions

1.1 **Act:** means the *Fines Act 1996*.

1.2 **Centrelink Reference Number (CRN):** means the unique identity number comprising nine digits and one letter allocated to Centrelink Customers by the Commonwealth Department of Human Services.

1.3 **Commissioner:** means the Commissioner of Fines Administration appointed under the Act.

1.4 **Customer:** means a person who is liable to pay a penalty notice under the Act.

1.5 **Delegated Officer:** means a Revenue NSW employee delegated by the Commissioner.

1.6 **Fine enforcement action:** means action under Part 4 of the Act.

1.7 **Fines Hardship Review Board:** means the Hardship Review Board under section 67 of the *State Debt Recovery Act 2018*, with functions under section 101B of the *Fines Act 1996*.

1.8 **Government Benefit:** means any of Newstart, ABSTUDY Living, Widow Allowance, Health Care Card, Disability Support Pension, the Ex-Carer Allowance (Child) Health Care card or Commonwealth Seniors Health Care Card, Veterans Affairs benefits (or any other pension or benefit paid by the Commonwealth of a kind approved by the Commissioner), each have the meanings conferred on them by the Commonwealth Department of Human Services.

1.9 **Penalty Notice and Penalty Reminder Notice** means a Penalty Notice or Penalty Reminder Notice issued under Part 3 of the Act.

1.10 **Registered Advocate:** means a person or organisation which has an approved registration as an advocate with Revenue NSW.

1.11 **Work and Development Order:** means an order approved by the Commissioner under section 99B of the Act.

1.12 **Work and Development Order Guidelines:** means the guidelines approved by the Minister under section 99I of the Act and published on the Revenue NSW website (www.revenue.nsw.gov.au).
2 Introduction

Customers who are issued penalty notices are required by law to pay the full amount under the notice. However, it is recognised that some Customers in hardship may have difficulty in paying the full amount.

The Act contains various provisions to assist Customers experiencing hardship to deal with their penalty notices by means other than payment in full. One of these provisions is contained in section 23 of the Act, under which the Commissioner of Fines Administration may, on application by a person who has been issued a penalty notice, reduce the penalty notice amount by 50%, having regard to Ministerial Guidelines made under section 120 of the Act.¹

The Ministerial Guidelines set out in this document are made under section 120. They set out the circumstances under which the Commissioner may approve an application for a reduction of a penalty notice amount by 50%.

¹ Section 23 of the Act was amended by the Fines Amendment Act 2019 to provide for the reduction of a penalty notice amount.
3 Responsibilities

3.1 The Commissioner has the following responsibilities under these Guidelines:
   a) ensuring that Revenue NSW staff comply with the Guidelines;
   b) ensuring that appropriate delegations are approved and described within a delegations instrument which is made available to officers responsible for making decisions under the Guidelines.

3.2 The Minister for Finance and Small Business is responsible for issuing the Guidelines under section 120 of the Act.

4 Customer’s eligibility to be considered for a 50% reduction of a penalty notice amount

4.1 The Customer may be eligible to receive a reduction of a penalty notice amount from the Commissioner after a penalty notice is issued, but before:
   a) the penalty is paid; or
   b) the penalty is enforced, withdrawn, annulled, remitted or otherwise resolved.

4.2 To be considered for a reduction of a penalty notice amount, the Customer must, at the time of the offence, be the recipient of a Government Benefit.

4.3 An application may be made for and on behalf of the Customer who has received a penalty notice. However, the Commissioner may require:
   a) a written authorisation from the Customer allowing the person or persons to act on behalf of the Customer; or
   b) the person or organisation making an application on behalf of the Customer to be a registered advocate with Revenue NSW for the purpose of acting on behalf of Customers.

4.4 The Customer may apply:
   a) verbally; or
   b) in writing, including using any on-line services platform used by Revenue NSW.
5 Demonstrating hardship

5.1 To receive a reduction in a penalty notice amount, an eligible Customer must satisfy a Delegated Officer that payment of the full amount will cause hardship.

5.2 To establish hardship, the Customer must satisfy a Delegated Officer that the Customer is not in a financial position to pay the penalty notice amount in full. The Delegated Officer is to consider:

   c) If the Customer has no existing debt with Revenue NSW, whether the penalty notice amount being considered it is reasonably able to be satisfied within twelve months on a payment plan.

   d) If the customer has an existing debt with Revenue NSW, whether the addition of this debt would add more than twelve months to the payment plan and/or make the debt unable to be reasonably serviced by the Customer.

5.3 A Delegated Officer may request evidence to support a Customer’s application. Supporting evidence may include but is not limited to:

   a) copies of last three pay slips
   b) statement of income from Centrelink
   c) copy of bank statements.

6 Exclusions

Where other mechanisms are available to resolve the penalty notice

6.1 In assessing an application for a reduction of a penalty notice amount, the Commissioner will consider whether the penalty notice could be resolved through a payment plan without causing the Customer hardship (as defined in 5.2 above) or a Work and Development Order.

6.2 A reduction of the penalty notice amount will not be approved if a Delegated Officer is satisfied that such other mechanisms are available to resolve the penalty notice.

6.3 In determining whether a Work and Development Order could be used to satisfy the penalty notice, a Delegated Officer may consider any of the following:

   a) Whether there are sponsors in the area where the Customer resides;

   b) Whether the hardship ground relied on by the Customer is ordinarily the type for which it may be difficult in obtaining a sponsor;

   c) Whether the Customer has previously been denied or refused the support of a sponsor;

   d) Whether there are other circumstances which would reasonably prevent the person from attending to perform a Work and Development Order (carer responsibilities etc).
Repeat offenders

6.4 A penalty notice amount may not be reduced where the Customer has a pattern of offending. For the purposes of this clause, a pattern of offending may include:

a) similar offending in the twelve months immediately before the date of the offence which is the subject of the application; or

b) offending in the twelve months immediately before the date of the offence which is the subject of the application, where one or more of the offences is considered by the Commissioner to be a significant offence to which a 50% reduction in the penalty notice amount ought not apply.

6.5 Despite 6.4 above, where the Commissioner is of the opinion that the Customer has an intellectual disability or cognitive impairment, a mental illness or is homeless, and that any of these was a significant contributing factor to the offences, the Customer’s application for a reduction of a penalty notice amount may still be considered.

No changes to driver licence sanctions, suspensions, cancellations, disqualifications or application of demerit points if application for reduction of penalty notice amount is successful

6.6 For the avoidance of doubt, and having regard to community expectations about serious driving infringements and community safety, a reduction in a penalty notice amount shall not reduce, apply to, or affect:

a) a suspension, cancellation, disqualification or application of demerit points to a driver licence which is imposed by Transport for NSW as a consequence of an offence to which a penalty notice is issued.

Other penalty notices not eligible for reduction under these Guidelines

6.7 The following types of penalty notices are not eligible for a reduction under these Guidelines:

a) any fine issued by a court, including a Victim Restitution Order deemed to be a court penalty for the purpose of penalty enforcement action, even if the penalty had originated as a penalty notice before an election was made to have the matter dealt with by a court under section 23A of the Act;

b) a voting related penalty notice issued by the NSW Electoral Office;

c) a jury duty related penalty notice issued by the NSW Sheriff’s Office;

d) penalty notices issued to bodies corporate;

2 The Commissioner may, from time to time, publish examples of significant offences on the Revenue NSW website.
3 Defined as per the Work and Development Order Guidelines (March 2017).
4 As voting related and jury duty related penalty notices are issued by the NSW Electoral Office and the NSW Sheriff’s Office respectively and are only referred to the Commissioner for enforcement, the Commissioner is not able to reduce penalty notice amounts for these penalty notices.
e) penalty notices in respect of an offence which the Commissioner considers to be a significant offence.

7 Supporting evidence required

7.1 The Commissioner may require the Customer to provide:

a) their CRN;

b) a copy of their Health Care Card;

c) any other document in support of the Customer’s application.

8 Consideration of the Customer’s application may be subject to verification of information or material supplied by the Customer

8.1 Consideration of the Customer’s application may be subject to:

a) the Customer authorising Revenue NSW to obtain verification of a Government Benefit;

b) an assessment of any other material provided by the Customer in support of their application;

c) information held by Revenue NSW.

8.2 Verification of the Customer’s Government Benefit may be conducted using an online service provided by the Commonwealth Department of Human Services.

9 Approvals

9.1 If a reduction of the penalty notice amount is approved, the Commissioner shall reduce the penalty notice amount by 50% as soon as practicable. The Commissioner may not reduce the penalty notice amount by more or less than 50%.

9.2 The Customer shall be notified in writing\(^5\) of their reduced penalty notice amount and options to resolve the remaining amount.

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\(^5\) The Customer may be notified by electronic means if the Customer consents.
10 **Refusals**

10.1 If a reduction of a penalty notice amount is refused, the Commissioner must advise the Customer in writing, including a summary of the options available to the Customer to resolve the penalty notice.

10.2 If the Customer applies for a reduction of a penalty notice amount after a penalty reminder notice has been issued and the reduction is refused, the Commissioner may issue a further penalty reminder notice.

10.3 The Commissioner may, on application by the Customer, review a decision to refuse an application to reduce a penalty notice amount.

10.4 A refusal to reduce a penalty notice amount is not subject to review by the Fines Hardship Review Board.

10.5 A refusal to reduce a penalty notice amount does not prevent a person from applying to the Commissioner to write off an enforced penalty notice under section 101 of the Act.

11 **Rescinded Approvals**

If an application for a reduction of a penalty notice amount is approved, and the Commissioner later determines that any one or more of the grounds relied on was false or misleading, the full amount of the penalty notice may be restored as if the penalty notice amount was never reduced.

12 **Guideline Review**

These guidelines will be reviewed in July 2021 and as the Minister determines in the future.

13 **Approval by Minister for Finance and Small Business**

Approved by Damien Tudehope, Minister for Finance and Small Business – 1 July 2020.

14 **Document Control**

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