

Debt Recovery Guidelines



Responsible collection of State debts

Guidelines for Revenue NSW to collect State debts

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1 Scope

- 1.1** These Guidelines are made under section 12 of the *State Debt Recovery Act 2018*. They set out the circumstances under which the Chief Commissioner may exercise certain functions under the Act including:
- a) the making of debt recovery orders and the taking of debt recovery action, including action against vulnerable persons,
 - b) the making of time to pay orders,
 - c) the cancellation of debt recovery orders in hardship cases, and
 - d) the allocation of payments between multiple State debts.
- 1.2** The Guidelines also set out the circumstances under which the Commissioner of Fines Administration may exercise functions under the *Fines Act 1996* with respect to State debts.
- 1.3** In particular, the Guidelines are intended to provide adequate protections to ensure the recovery process for State debts does not have a disproportionate impact on vulnerable persons or other persons.
- 1.4** Research by the Law and Justice Foundation of NSW about the impact of the fines system on disadvantaged people was taken into consideration when developing these Guidelines.¹
- 1.5** The following groups were also consulted about the Guidelines and are acknowledged for their contributions:
- a) Aboriginal Legal Service (NSW/ACT)
 - b) Community Legal Centres NSW
 - c) Department of Family and Community Services
 - d) Department of Justice NSW
 - e) Information and Privacy Commission NSW
 - f) Legal Aid NSW
 - g) NSW Revenue Professionals
 - h) Office of Local Government
- 1.6** The Guidelines apply to the Chief Commissioner and Commissioner of Fines Administration and all Revenue NSW staff members who are delegated under section 101 of the *State Debt Recovery Act 2018* or section 116A of the *Fines*

¹ Wei, Z, McDonald, HM, and Coumarelos, C 2018, *Fines: are disadvantaged people at a disadvantage?*, Justice Issues, no. 27, Law and Justice Foundation of NSW, Sydney South.

Act 1996 to perform functions in relation to State debts. Appropriate delegations have been developed.

- 1.7 The Guidelines also apply to all NSW Department of Finance, Service and Innovation activities, including system and automated functions, which relate to any functions dealt with in these Guidelines.

2 Responsibilities

- 2.1 Functions exercised under the *State Debt Recovery Act 2018* in connection with the recovery of State debts rest primarily with the Chief Commissioner.
- 2.2 The Commissioner of Fines Administration's role is more limited and consists of being able to extend a work and development order, made in respect of a fine, to a State debt. In this way, a person who has qualified for a work and development order for a fine may also have that order applied to a debt, to assist that person to resolve the debt. The Commissioner of Fines Administration's role is explained in more detail at section 11.
- 2.3 In addition to the Chief Commissioner's statutory responsibilities, the Chief Commissioner is responsible for seeking ministerial approval of the Guidelines and ensuring that Revenue NSW staff comply with the Guidelines.
- 2.4 The Minister for Finance, Services and Property is responsible for consulting with the Attorney General about the Guidelines.

3 Definitions

- 3.1 **Chief Commissioner:** means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.
- 3.2 **Commissioner of Fines Administration:** means the Commissioner of Fines Administration under the *Fines Act 1996*.
- 3.3 **Customer:** means a person or company who is liable to pay a tax debt, a grant debt or a referable debt under a debt notice, or is or may be liable to pay a State debt.
- 3.4 **Debt notice:** means a notice that a responsible authority is required to serve on a person for an unpaid referable debt before the debt can be referred to the Chief Commissioner for debt recovery action. For tax and grant debts, debt notices are issued by the Chief Commissioner under the legislation under which those debts are incurred.
- 3.5 **Debt recovery action:** means action under Part 6 of the *State Debt Recovery Act 2018* and refers to principal debt recovery action and ancillary functions that may be taken after a debt recovery order has been issued and remains unpaid 7 days after the due date in the notice of the debt recovery order.

- 3.6 Debt recovery costs:** means the debt recovery costs payable under a debt recovery order, being the prescribed debt recovery costs and the Sheriff's additional costs (if any).
- 3.7 Debt recovery order:** means an order under section 35 of the *State Debt Recovery Act 2018*.
- 3.8 Garnishee order:** means an order under section 55 of the *State Debt Recovery Act 2018* to satisfy all or part of a debt recovery order by deducting money from a person's income or bank account.
- 3.9 Grant debt:** A grant debt means:
- (a) a grant debt under *the First Home Owner Grant (New Homes) Act 2000*, or
 - (b) a rebate debt under the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*, or
 - (c) a grant debt under the *Small Business Grants (Employment Incentive) Act 2015*.
- 3.10 Hardship Review Board:** means the Hardship Review Board constituted under section 67 of the *State Debt Recovery Act 2018*.
- 3.11 Property seizure order:** means an order under section 54 of the *State Debt Recovery Act 2018*.
- 3.12 Referable debt:** A referable debt means:
- (a) a fee, charge or other amount specified in Schedule 1 of the *State Debt Recovery Act 2018*, or
 - (b) a fee, charge or other amount that is declared to be a referable debt by order under section 7(2) of the *State Debt Recovery Act 2018*.
- 3.13 Referral date:** in relation to a referable debt means the date on which the referable debt is referred by the responsible authority to the Chief Commissioner for the making of a debt recovery order under the *State Debt Recovery Act 2018*.
- 3.14 Responsible authority:** for a referable debt means the public authority to which the referable debt is payable.
- 3.15 State debt:** A State debt is any of the following:
- (a) a referable debt,
 - (b) a tax debt,
 - (c) a grant debt.

- 3.16 Tax debt:** A tax debt means a tax debt under the *Taxation Administration Act 1996*.
- 3.17 Time to pay order:** means an order under section 60 of the *State Debt Recovery Act 2018*.
- 3.18 Vulnerable person:** for the purpose of these Guidelines means a person who has a mental illness, has an intellectual disability or cognitive impairment, is homeless or experiencing acute economic hardship (including as a result of domestic violence), or has a serious addiction to drugs, alcohol or volatile substances.
- 3.19 Work and development order:** means an order issued under Division 8 Subdivision 1 of Part 4 of the *Fines Act 1996*.

4 Internal review

- 4.1** This section of the Guidelines relates to internal review of referable debts only. Certain referable debts are excluded from the internal review process because there are already statutory internal review options available under other legislation.²
- 4.2** A responsible authority may conduct a review of a referable debt at any time, regardless of whether an application has been made or the review is being undertaken on the reviewing agency's own motion.³
- 4.3** An application for internal review must be made in writing and set out the grounds for the review.⁴ The grounds for review may include but are not limited to -
- a) The applicant not being liable for the referable debt (including if the issue of the debt notice involved a mistake of identity),
 - b) The amount of the debt specified on the debt notice being incorrect,
 - c) The applicant requiring more time to pay the debt (whether in full or under an instalment arrangement),
 - d) The applicant being unable to pay the debt (whether in full or by instalments) because of hardship.
- 4.4** An application must generally be made by the due date on the notice of the debt recovery order.⁵ However, where the person did not receive an earlier debt notice or notice of the debt recovery order, and a statutory declaration is supplied to support this claim, an internal review may still be conducted at the discretion of the Chief Commissioner, as long as the application is received within a reasonable timeframe of the person becoming aware of the debt.

² Section 25(2) of the *State Debt Recovery Act 2018*.

³ Section 24(2) of the *State Debt Recovery Act 2018*.

⁴ Section 26(2) of the *State Debt Recovery Act 2018*.

⁵ Section 26(6) of the *State Debt Recovery Act 2018*.

- 4.5** Reviews will generally be referred to the responsible authority for determination, unless a debt recovery agreement provides for the Chief Commissioner to make review decisions on behalf of the responsible authority.⁶
- 4.6** A person is not eligible for a review if a review has already been undertaken in relation to the referable debt.⁷
- 4.7** If supporting documentation is required to undertake the review, the customer will be notified in writing and provided with 28 days to supply the information.⁸ Debt recovery action will be suspended during this time. If the information is not supplied, the responsible authority may choose not to conduct the review, or conduct the review without the additional information.⁹
- 4.8** Outcomes of an internal review can include:
- a) the debt notice is confirmed,
 - b) the debt notice is confirmed with changes to payment arrangements, or
 - c) the debt notice is revoked.
- 4.9** Written notice must be given to the applicant following an internal review.¹⁰ Where the debt is confirmed, the debt notice or debt recovery order must be paid within 14 days from the date of the written notification, or by due date on the debt notice or notice of debt recovery order if it is later.
- 4.10** A change of payment arrangement following internal review may be in the form of:
- a) reduction in the amount payable,
 - b) extension of the due date, or
 - c) permitting the debt to be paid by instalments or reducing the instalments on an existing arrangement.
- 4.11** If a responsible authority reduces the amount payable under a debt recovery order, the order must first be revoked and a new debt notice issued to the customer with the reduced amount.

5 Debt recovery orders and action

- 5.1** Debt recovery orders are made by the Chief Commissioner under Part 4 of the *State Debt Recovery Act 2018*. An order may relate to one or more

⁶ Section 26(5) of the *State Debt Recovery Act 2018*.

⁷ Section 27(2)(a) of the *State Debt Recovery Act 2018*.

⁸ Section 28(2) of the *State Debt Recovery Act 2018*.

⁹ Section 28(3) of the *State Debt Recovery Act 2018*.

¹⁰ Section 33(1) of the *State Debt Recovery Act 2018*.

referable, tax or grant debts and may be made in the circumstances described in Division 1 of Part 4 of the Act.

5.2 Debt recovery action may be taken by the Chief Commissioner under Part 6 of the *State Debt Recovery Act 2018*. Such action may include principal debt recovery actions and ancillary functions.

5.3 Principal debt recovery actions include:

- a) property seizure orders,
- b) garnishee orders, and
- c) registration of debt recovery orders as charge on land.¹¹

5.4 Ancillary functions include:

- a) power to require information, records and attendance,
- b) power of entry to execute property seizure orders, and
- c) power of person executing an order or warrant to demand name and address.¹²

5.5 Subject to the requirements of the *State Debt Recovery Act 2018*, the Chief Commissioner will make all reasonable endeavours to engage with a customer to –

- a) resolve a debt before debt recovery action may be taken (for example, through the making of a time to pay order), or
- b) if debt recovery action is initiated, to take such action in a way that minimises to the extent possible adverse impacts on the customer and results in the suspension or cancellation of debt recovery action at the earliest opportunity.

Where a customer has more than one State debt (or has a debt payable to the Commissioner of Fines Administration in addition to the State debt), the Chief Commissioner, or the Commissioner of Fines Administration (as the case may be), may consider the various debts payable in determining a suitable approach to taking debt recovery action.

5.6 Debt recovery action may not be taken unless notice of the debt recovery order has been served on the person and the debt remains unpaid for at least 7 days after the due date specified in the notice.¹³

5.7 Notice of a debt recovery order will include the details of the State debt including a description of the debt, the amount, any review options, the due date for payment, and an accurate description of the consequences of non-

¹¹ Part 6, Division 2 of the *State Debt Recovery Act 2018*

¹² Part 6, Division 3 of the *State Debt Recovery Act 2018*

¹³ Section 50 of the *State Debt Recovery Act 2018*

payment (that is, a description of the debt recovery action that may be taken against the person, any interest that may become payable and debt recovery costs that may be imposed)¹⁴.

- 5.8** The Chief Commissioner may allow a customer more time to pay a State debt, revoke a debt recovery order, or suspend or cancel debt recovery action in certain circumstances, including in cases of hardship.
- 5.9** The Commissioner of Fines Administration may disclose information to the Chief Commissioner for the purpose of administering these Guidelines, including, but not limited to, the taking of debt recovery action under this section.¹⁷ Information which may be disclosed includes:
- a) full name (including any known aliases), sex and date of birth,
 - b) the current and previous addresses,
 - c) telephone and electronic contact information,
 - d) name and contact information of a current or previous employer,
 - e) driver licence number or the number and type of any other relevant licence,
 - f) name of an authorised deposit-taking institution of which the fine defaulter is a customer and details of any account held,
 - g) details of any property owned by the person,
 - h) information confirming whether the person is a vulnerable person,
 - i) information known about the person's financial capacity to pay the fines,
 - j) any other identification number that would assist with administering these guidelines.

6 Debt recovery action against vulnerable persons

- 6.1** All debt notices or debt recovery orders issued by the Chief Commissioner will include a reference to the contact number for LawAccess NSW for advice about legal processes.
- 6.2** Debt recovery action will not be taken against people under 18 or if the State debt was incurred when the person was under 18.¹⁸
- 6.3** Where the Chief Commissioner is notified by NSW Trustee and Guardian that a person is under a financial management order, debt recovery action will be suspended for a period of up to 12 months to allow time for NSW Trustee and

¹⁴ Section 40 of the *State Debt Recovery Act 2018*

¹⁷ Section 117A(1)(a3) of the *Fines Act 1996*

¹⁸ Section 11(1) of the *State Debt Recovery Act 2018*

Guardian to make payment or apply for time to pay, for the debt recovery order to be revoked, or to extend a fines Work and Development Order to include State debts, if appropriate. Debt recovery action may be commenced after this period if the debt recovery order remains outstanding.

- 6.4** Where the Chief Commissioner is notified by Corrective Services NSW that a person is serving a custodial sentence, debt recovery action will generally be suspended unless there are exceptional circumstances.
- 6.5** Debt recovery action in the form of a garnishee order or property seizure order will not be taken where the combined value of all debt recovery orders for a person is less than \$100. A debt recovery order will not be registered as a charge on land where the combined value of all debt recovery orders for a person is less than \$1,000.
- 6.6** The Chief Commissioner will not take debt recovery action against persons who are known to be vulnerable (refer to 6.9) if, in the opinion of the Chief Commissioner, the taking of debt recovery action would be unreasonably harsh in the circumstances or would have an excessively detrimental impact on the customer. In these circumstances, the debt recovery order may be revoked if the person's situation is unlikely to change, or debt recovery action may be suspended for a nominated period if the person's circumstances are likely to improve.
- 6.7** When making a determination under 6.6, the Chief Commissioner may take into account information obtained about the person in the administration or execution of the *State Debt Recovery Act 2018*.
- 6.8** The Chief Commissioner can also choose to take only certain types of debt recovery action, having regard to a person's vulnerability.
- 6.9** When determining whether a person is vulnerable, the Chief Commissioner may rely on evidence from:
- a) government sector agencies such as the Department of Family and Community Services, the Legal Aid Commission of NSW, the Ministry of Health and Corrective Services NSW, or
 - b) community welfare organisations such as local land councils, indigenous medical or health centres, neighbourhood centres, charities, legal services (such as Community Legal Centres or Aboriginal Legal Services), or other advocacy groups, or
 - c) health practitioners and health service providers, or
 - d) accredited financial counsellors
- who have an ongoing association with the person or have investigated their circumstances.

- 6.10** The Chief Commissioner will use all reasonable endeavours to obtain relevant information concerning a person's vulnerability, consistent with law. Persons issued with Debt Notices or Debt Recovery Orders will be given the opportunity to inform the Chief Commissioner of circumstances impacting their ability to pay by the due date and to consent to the disclosure of such information held by another entity.
- 6.11** The categories of "vulnerable person" referenced in 3.18 are defined as follows.

Mental illness

- 6.12** 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).¹⁹

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

Intellectual disability

- 6.13** 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.²⁰

Cognitive impairment

- 6.14** 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

¹⁹ This definition is taken from s 4 of the *Mental Health Act 2007* (NSW)

²⁰ This definition is adapted from the definition of the intellectual disability target group in section 24 of the *Disability Inclusion Act 2014* (NSW)

- 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.²¹

Homeless

6.15 A person is homeless if he or she is:

- 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 because of domestic violence, unsafe living conditions or inability to afford other housing, or
- d) living in a caravan park because of their inability to access other accommodation, or
- e) living in boarding houses on a medium to long-term basis.²²

Acute economic hardship

6.16 Acute economic hardship may be short or long term. It means when a person is willing to pay the debt but does not have the financial capacity to do so.

Short term hardship can arise from a temporary change in circumstances including:

- a) Loss or change in income
- b) Illness
- c) Loss arising from an accident
- d) Death in the family
- e) Separation, divorce or other family crisis

²¹ This list of examples is adapted from the definition of cognitive impairment in s61H(1A) of the *Crimes Act 1900 (NSW)*

²² This definition is based on the Chamberlain and McKenzie definition of homelessness, which is used by the Australian Bureau of Statistics in their Information paper – A Statistical Definition of Homelessness, 2012

- f) Family violence
- g) Loss arising from a natural disaster, such as drought, flood or fire
- h) Some other temporary financial difficulty due to loss of income or increase in essential expenditure.

Long term hardship can arise from any of the reasons listed above, or it can relate to the problem of managing living costs with a low or fixed income such as a pension or superannuation payment.

6.17 When assessing whether a person is in acute economic hardship, the Chief Commissioner will consider indicators of hardship, including whether:

- a) the customer is in receipt of a Centrelink benefit and holds a Pensioner Concession Card or Centrelink Low Income Health Care Card,
- b) a financial counsellor, welfare agency, legal assistance service or other independent representative has indicated that the customer is in hardship,
- c) the customer has previously applied for hardship relief and the circumstances are not likely to have changed,
- d) the customer has a payment history which indicates difficulty in meeting payment in the past,
- e) the customer has self-identified as being in hardship.

6.18 The Chief Commissioner will also consider the following factors when assessing whether a person has financial capacity to pay the debt:

- a) the person's total disposable income and current financial commitments,
- b) if payment of the debt will leave the person unable to provide children or other dependants with the necessities of food, shelter, clothing, medical treatment and other basic requirements,
- c) whether it is practical for the person to rearrange their finances or draw upon non-essential assets to pay the debt,
- d) whether the person has disposed of any assets since the debt became payable,
- e) the duration of the hardship,
- f) whether the person is capable of undertaking any other available mitigation option.

- 6.19** Various options are available for any person experiencing financial difficulties to assist in paying a debt. These options are described in sections 9 and 10 of these Guidelines.

Serious addiction to drugs, alcohol or volatile substances

- 6.20** 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 two (or more) of the following, occurring any time in the same 12-month period:

- a) Tolerance, as defined by either of the following:
 - i. A need for markedly increased amounts of the substance to achieve intoxication or the desired effect, or
 - ii. Markedly diminished effect with continued use of the same amount of the substance.
- b) Withdrawal, as manifested by either of the following:
 - i. The characteristic withdrawal syndrome for the substance, or
 - ii. The same (or closely related) substance is taken to relieve or avoid withdrawal symptoms.
- c) The substance is often taken in larger amounts or over a longer period than intended.
- d) There is a persistent desire or unsuccessful efforts to cut down or control substance use.
- e) A great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
- f) Important social, occupational, or recreational activities are given up or reduced because of substance use.
- g) 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).²³

- 6.21** For the purpose of these Guidelines, the term volatile substance is intended to refer to inhalants such as adhesives, aerosol sprays, petrol or paint thinners.

²³ Based on the definition of addiction, substance related disorders and alcoholism in American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders: DSM-V. 5th edition, Washington D.C: American Psychiatric Association (2013)

7 Allocation of payments between multiple State debts

- 7.1 Payments made or directed to the Chief Commissioner under a debt recovery order will be allocated firstly towards payment of the debt recovery costs payable.²⁴
- 7.2 After all debt recovery costs are paid, payments will be allocated to the remainder of the State debt.²⁵
- 7.3 Where there are multiple referable debts under a debt recovery order, payments will be allocated from oldest debts to the newest, by the date the debts were referred to the Chief Commissioner.²⁶
- 7.4 The Chief Commissioner has discretion to allocate payments in an order otherwise than as provided for above, having regard to any of the following:
- a) the wishes of the customer,
 - b) the nature of the debt,
 - c) the consequences of non-payment of the debt,
 - d) the date on which the debt became payable²⁷.
- 7.5 The Chief Commissioner can exercise the above discretion on request from a customer or on the Commissioner's own motion.

8 Court election

- 8.1 This section of the Guidelines relates to referable debts only.
- 8.2 A person who receives a notice of a debt recovery order in relation to a referable debt may elect to have the matter dealt with by a court, unless judgment for the debt has already been obtained from a court.²⁸
- 8.3 Generally, the deadline for electing to have a referable debt dealt with by a court is the due date on the notice of debt recovery order, or 28 days after notice of the outcome of an internal review is sent to a customer, whichever is later.²⁹
- 8.4 The Chief Commissioner may accept a court election outside the timeframes in 8.3 if:

²⁴ Section 94 of the *State Debt Recovery Act 2018*

²⁵ Section 94 of the *State Debt Recovery Act 2018*

²⁶ Section 95(2)(c) of the *State Debt Recovery Act 2018*

²⁷ Section 95(7) of the *State Debt Recovery Act 2018*

²⁸ Section 44 of the *State Debt Recovery Act 2018*

²⁹ Section 45(2) of the *State Debt Recovery Act 2018*

- a) debt recovery action has not commenced, or
 - b) the person was not aware that the debt recovery order had been made (but only if the court election is made in a reasonable timeframe), or
 - c) the person was aware of the debt recovery order, but was prevented from taking action.
- 8.5** For the purpose of 8.4(b), a statutory declaration from the customer is acceptable evidence that he or she was not aware of the debt recovery order, unless there is evidence to the contrary.
- 8.6** Examples of acceptable reasons under 8.4(c) include, but are not limited to:
- a) The person was overseas when the notice was issued and this is supported by international movement records,
 - b) The person could not act on the notice because he or she was caring for an ill person or was sick themselves and this is supported by a medical practitioner or other health service provider,
 - c) The person was incarcerated when the notice was issued,
 - d) The person was impacted by domestic circumstances, such as family violence or homelessness.
- 8.7** If a person elects to have a matter dealt with by a court, an internal review must be undertaken before the matter is listed at court, unless a review was previously undertaken.³⁰
- 8.8** A debt recovery order will be revoked if the matter is listed at court, or if the responsible authority decides to withdraw the debt following an internal review.
- 8.9** Where a customer elects for a matter to be heard in court, and judgment is made in favour of the Chief Commissioner, costs may be awarded to the Chief Commissioner.³¹ All notices of debt recovery orders will contain the contact number for LawAccess to seek legal advice.

9 Flexible payment options

- 9.1** Flexible payment options are available to all people who are experiencing payment difficulties. The Chief Commissioner may extend the time for payment of a State debt or allow the State debt to be paid by instalments by making a ***time to pay order*** under section 60 of the *State Debt Recovery Act 2018*.

³⁰ Section 46(1) of the *State Debt Recovery Act 2018*

³¹ Section 49 of the *State Debt Recovery Act 2018*

- 9.2** A payment arrangement under a time to pay order may be granted at any time after a debt recovery order is made, or in conjunction with the making of a debt recovery order.³²

Applications

- 9.3** An application for time to pay may be made:
- a) via telephone, or
 - b) electronically via an online service or email, or
 - c) in writing.
- 9.4** A payment arrangement may be made over the telephone either in response to an inquiry from a customer or as a result of contact made directly to the customer.
- 9.5** There is a general presumption that a payment arrangement will be approved when requested, as long as the Chief Commissioner considers that the arrangement is reasonable with regard to the person's situation and the amount of the debt. In exceptional circumstances, a customer may be asked to provide further documentation to substantiate a request (e.g. a Centrelink income statement, bank statement).

General principles

- 9.6** Once approved, time to pay will usually be in the form of a payment plan, where a customer is required to pay a set rate at regular intervals (e.g. \$50 per fortnight). Time to pay can also be in the form of an extension of the due date for payment.³³
- 9.7** It is the customer's responsibility to arrange payment by the due dates to prevent further debt recovery action. However, the Chief Commissioner will work with customers whose circumstances have changed and cannot make a payment by the due date to resolve a debt.
- 9.8** Once time to pay is granted, further debt recovery action will not be commenced, 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 and a charge on land need not be cancelled, until the debt recovery order is paid.³⁴
- 9.9** A customer may apply to amend a payment arrangement, and a time to pay order may be amended or cancelled by the Chief Commissioner.

³² Section 60(2) of the *State Debt Recovery Act 2018*

³³ Section 60(3) of the *State Debt Recovery Act 2018*

³⁴ Section 77(2) of the *State Debt Recovery Act 2018*

- 9.10** Where an application for time to pay is made for the first time, the application will be approved unless the Chief Commissioner considers the application is not reasonable.
- 9.11** A decision on whether further time to pay will be allowed may take into account any or all of the following:
- a) the customer's income,
 - b) the customer's expenditure,
 - c) whether sufficient assets or financial reserves exist to enable payment of a debt without the need to enter into an instalment arrangement,
 - d) the amount of the debt to be repaid,
 - e) whether previous payment arrangements have been complied with,
 - f) the customer's commitments to pay other competing debts (whether or not by instalment).
- 9.12** Customers will be expected to repay an outstanding debt within a reasonable timeframe. However, the person's situation will always be taken into account when determining an appropriate payment arrangement.
- 9.13** A time to pay order can incorporate:
- a) the amounts to be paid each instalment,
 - b) the payment frequency,
 - c) a requirement to make an up-front payment,
 - d) a condition requiring an update on the customer's financial position at a specified review date during the course of the payment arrangement.
- 9.14** A time to pay order may be amended to include new debt recovery orders. However, this will be at the discretion of the Chief Commissioner and conditions may be applied.

Further applications

- 9.15** If an application for time to pay is declined, or where a time to pay order is cancelled by the Chief Commissioner due to non-compliance, the customer may make a further application.
- 9.16** An up-front payment may be required before a further payment arrangement is approved. However, the Chief Commissioner will take into consideration the person's situation when determining whether this is appropriate. For example, vulnerable persons will not be required to make an up-front payment.

Adding further debt recovery orders to a time to pay

- 9.17** Where a payment arrangement exists, and a customer requests further time to pay an additional debt recovery order, the arrangement may be rescheduled to include the additional debt recovery order.
- 9.18** Additional conditions may be imposed on the adding of the additional debt recovery order, including:
- a) increasing the instalment amount or frequency of payment,
 - b) requiring further or updated financial information substantiating that the customer has insufficient means to repay the additional debt recovery order immediately,
 - c) requiring an up-front payment before the debt recovery order is added,
 - d) setting a review date during the course of the time to pay (to allow an update of the customer's financial position).
- 9.19** When exercising the discretion to add an additional debt recovery order to an existing payment arrangement, the Chief Commissioner may consider the number of previous occasions a customer has applied to have further debt recovery orders added.
- 9.20** Additional debt recovery orders will not be added to a payment arrangement where payments are in arrears. If the arrears cannot be brought up to date, the current time to pay order will be revoked and a new application will be required.
- 9.21** Additional debt recovery orders may be added to an existing time to pay order without the consent of the customer.³⁵ The instalment amount will be increased so that the debt is repaid in the same amount of time.
- 9.22** Where an additional debt recovery order is added without the customer's consent, the Chief Commissioner must give written notice to the customer.³⁶ If the customer requests the additional debt recovery order not be included, the payment arrangement will be rescheduled to remove that debt recovery order.³⁷
- 9.23** Any debt recovery orders removed from a time to pay order are subject to debt recovery action unless the debt is paid or otherwise satisfied.

Arrears

- 9.24** A payment arrangement is considered to be in arrears if the payment of any scheduled instalment is not made by the date specified in the time to pay order. If an arrangement is in arrears for more than 7 days, it may be revoked

³⁵ Section 61(2) of the *State Debt Recovery Act 2018*

³⁶ Section 61(3) of the *State Debt Recovery Act 2018*

³⁷ Section 61(4) of the *State Debt Recovery Act 2018*

and further debt recovery action will apply. If a scheduled instalment is in arrears but is paid within 7 days of the due date for payment of that instalment, the time to pay order will not be revoked

Review

- 9.25** Where an application for time to pay is refused, or approved with terms other than the terms proposed by the customer, the customer may appeal the decision to the Hardship Review Board.³⁸

10 Other options for addressing payment difficulties

- 10.1** Where flexible payment options are insufficient to assist a person to pay a debt (e.g. because a person is in acute economic hardship), other options may be considered. These include suspending debt recovery action for a nominated period, reducing a referable debt, and revoking a debt recovery order relating to an unpaid referable debt.
- 10.2** The Chief Commissioner will take into account a person's situation and capacity to pay when determining a realistic option.
- 10.3** Where appropriate, the Chief Commissioner may rely on information provided by a financial counsellor or other independent representative. The Chief Commissioner may also refer a customer to assistance services such as financial counsellors or services that deal with people in hardship.

Suspension of debt recovery action

- 10.4** The Chief Commissioner may suspend debt recovery action for a nominated period where a customer is experiencing longer term-payment difficulties. The suspension period will be determined having regard to the person's individual circumstances and the level of hardship relief required. For example, a suspension for a period of six months may allow a customer time to repay other competing debts and improve their capacity to pay.
- 10.5** The Chief Commissioner will suspend debt recovery action if directed to do so by the Hardship Review Board.³⁹
- 10.6** Where a person applies for time to pay, to revoke a debt recovery order, or for a review by the Hardship Review Board⁴⁰ debt recovery action will be suspended while the application is being assessed unless the Chief Commissioner is satisfied that the application is an attempt to delay recovery action or is otherwise an abuse of the process. For the purpose of these Guidelines, a third or subsequent application of the same type within a 12 month period will be considered an attempt to delay recovery action.

³⁸ Section 68(1)(a) of the *State Debt Recovery Act 2018*

³⁹ Section 71(1) of the *State Debt Recovery Act 2018*

⁴⁰ Section 71(3) of the *State Debt Recovery Act 2018*

- 10.7** No new debt recovery action will be initiated while the suspension is in place, and any property seizure order or garnishee order that is in force will be revoked.⁴¹ However, any property obtained through debt recovery action will not be returned and a charge on land will not be cancelled unless the debt recovery order is revoked or the relevant State debt is paid.⁴²
- 10.8** The Chief Commissioner will suspend debt recovery action where the Chief Commissioner is satisfied that the person is vulnerable and the taking of debt recovery action would be unreasonably harsh in the circumstances or would have an excessively detrimental impact on the customer.
- 10.9** The period of suspension under 10.8 will depend on the likelihood of the person's circumstances improving.
- 10.10** Where a vulnerable person's circumstances are not likely to improve, the debt recovery order will be revoked unless the Chief Commissioner believes it is economical to continue to pursue the debt recovery order and it is reasonable to do so having regard to the person's vulnerability (for example, where a person's vulnerability is of a short term nature and debt recovery action is likely to be successful in the future for a substantial debt because of an inheritance).

Cancellation of debt recovery action

- 10.11** The Chief Commissioner may cancel debt recovery action and revoke a debt recovery order for a referable debt where the Chief Commissioner considers:
- a) the customer does not have sufficient means, and is unlikely to have sufficient means, to pay the State debt, and
 - b) debt recovery action has not been, and is unlikely to be, successful in satisfying the State debt.
- 10.12** Debt recovery action may be cancelled in respect of the whole unpaid referable debt the order relates to, or in respect of a part of the unpaid referable debt the order relates to. This may be in the form of a negotiated settlement where the Chief Commissioner agrees to accept a partial payment in satisfaction of the whole debt.
- 10.13** When making a determination under 10.11(a), the Chief Commissioner will consider any property owned by the customer. However, ownership of a residential dwelling will not automatically preclude a person from being able to access hardship relief in relation to State debts.
- 10.14** The Chief Commissioner may take into account information provided in relation to previous State debts, as long as the Commissioner is satisfied the information is accurate. In making this determination, the Chief Commissioner

⁴¹ Section 77(1) of the *State Debt Recovery Act 2018*

⁴² Section 77(2) of the *State Debt Recovery Act 2018*

will consider the nature of the information, whether it is likely to have changed, and any other information available.

- 10.15** For the purpose of these Guidelines, incarceration does not constitute grounds for debt recovery action to be cancelled under 10.11 unless the length of incarceration is such that it would be uneconomical to pursue the debt recovery order.
- 10.16** The Chief Commissioner will cancel debt recovery action and revoke a debt recovery order for a referable debt if the referring agency requests the order be revoked, or if a debt recovery agreement provides for revocation in the circumstances.
- 10.17** The Chief Commissioner will cancel debt recovery action and revoke a debt recovery order for a referable debt if the customer elects to have the matter heard in court.
- 10.18** The Chief Commissioner will cancel debt recovery action and revoke a debt recovery order if directed to do so by the Hardship Review Board.
- 10.19** The Chief Commissioner will cancel debt recovery action in respect of a State debt on payment in full of the State debt. However, debt recovery action will not be cancelled if the customer has another unpaid State debt that is eligible for debt recovery action.
- 10.20** Debt recovery action may be cancelled in respect of the whole or part of the unpaid debt.⁴³
- 10.21** If a debt recovery order is revoked completely, the order ceases to have effect and debt recovery action is to be cancelled. Debt recovery costs are no longer payable and will be refunded if paid.⁴⁴
- 10.22** Where a debt recovery order is revoked because a person is vulnerable or otherwise in hardship, the Chief Commissioner may disclose this information to the referring agency for the purpose of determining whether future debts should be referred for the making of debt recovery orders.

Garnishee order refunds in case of hardship

- 10.23** The Chief Commissioner may refund all or part of an amount paid through a garnishee order, where the person is in hardship and it is appropriate to do so.⁴⁵
- 10.24** For the purpose of these Guidelines, it is appropriate to refund all or part of garnisheed payments where:
- a) the medical circumstances of the customer warrant a refund, or

⁴³ Section 64 of the *State Debt Recovery Act 2018*

⁴⁴ Section 82(1) of the *State Debt Recovery Act 2018*

⁴⁵ Section 65(1) of the *State Debt Recovery Act 2018*

- b) the health and safety of the customer or other persons would be put at risk unless the money is refunded, or
- c) the customer is facing financial hardship as a result of the garnishee order, or
- d) the customer is identified as vulnerable and failure to refund monies garnisheered would be harsh or unreasonable.

10.25 Customers may be required to supply appropriate documentation in support of any claim for a refund.

10.26 If the person is eligible for a refund, the appropriate amount to refund will be negotiated based on the customer's needs and individual circumstances, taking into consideration any documentation supplied in relation to the customer's claim.

10.27 An application to refund garnisheered monies may be made by or on behalf of a customer. Where an application is made on behalf of a customer by an advocacy group or a government agency, any determination to refund may be made in consultation with that group or agency, subject to privacy legislation.

10.28 A refund does not affect the liability of the customer for any debt that is subject of the garnishee order, including for any amount refunded to the customer.⁴⁶

11 Work and development orders

11.1 A Work and Development Order (WDO) is an order that allows people who are experiencing significant hardship to reduce certain debts through voluntary participation in unpaid work, courses, treatment, programs and other activity.

11.2 The Commissioner of Fines Administration may make or vary a WDO so that it extends to all or part of an unpaid debt recovery order, in addition to a fine.⁴⁷ That is, a WDO cannot be made for a debt recovery order alone.

11.3 A WDO can only be extended to include State debt if:

- a) the Commissioner of Fines Administration has the power to make, or has already made, a WDO for the customer in relation to a fine, and
- b) the customer and WDO sponsor agree to extend the WDO to include State debt, and
- c) the State debt to be included is subject to a debt recovery order.

11.4 All of the provisions under Division 8, Subdivision 1 of Part 4 of the *Fines Act 1996* apply to WDOs that are extended to include State debt, except section

⁴⁶ Section 65(2) of the *State Debt Recovery Act 2018*

⁴⁷ Section 99K of the *Fines Act 1996*

99E.⁴⁸ The Guidelines issued by the Attorney General under section 99I of the *Fines Act 1996* also apply.

- 11.5** Debt recovery action must not be taken against a customer under the *State Debt Recovery Act 2018*, in respect of a debt recovery order to which the WDO extends, while the WDO is in force.⁴⁹
- 11.6** Any activity undertaken as part of the WDO is to be counted first towards satisfaction of the fine(s) to which the order relates, then the State debts⁵⁰.
- 11.7** Where a WDO extends to multiple State debts, those debts will be satisfied through a WDO in the same order as the allocations of payments in section 6 of these Guidelines, unless the Chief Commissioner determines otherwise.
- 11.8** The Commissioner of Fines Administration may refuse to extend a WDO to include State debts if satisfied that doing so would extend the WDO for an unreasonable length of time.
- 11.9** The Commissioner of Fines Administration may refuse to extend a WDO to include State debts if a debt recovery agreement provides that WDOs may not extend to debt recovery orders subject to that debt recovery agreement.
- 11.10** Where an application to make or extend a WDO to a debt recovery order is refused by the Commissioner of Fines Administration, or where a WDO extended to a debt recovery order is revoked, the customer may appeal the decision to the Hardship Review Board⁵¹.

12 Service of notices

- 12.1** The Chief Commissioner may serve a notice of a debt recovery order:
 - a) personally,
 - b) by post, or
 - c) by electronic transmission (for example, to a person's email address, phone number or via a push notification).
- 12.2** For the purpose of these Guidelines, a notice is considered served:
 - a) on the day it is personally given to a person,
 - b) on the seventh working day after it is posted to an address (as defined in 12.4), unless the person establishes that it was not served within that period, or
 - c) on the next working day after the electronic transmission is sent, unless the person establishes that it was not served within that period.

⁴⁸ Section 99K(3) of the *Fines Act 1996*

⁴⁹ Section 99K(7) of the *Fines Act 1996*

⁵⁰ Section 99K(6) of the *Fines Act 1996*

⁵¹ Section 101B(1)(a) of the *Fines Act 1996*

- 12.3** The Chief Commissioner will make reasonable enquiries to obtain a person's current address for service of a notice of a debt recovery order by post.
- 12.4** The address for service of a notice of a debt recovery order by post includes:
- a) the address for service of the person in connection with the State debt the order relates to, or
 - b) the address provided for the person by a NSW government agency (for example, the NSW Police Force, Roads and Maritime Services or Service NSW), a State owned corporation⁵²; an employer⁵³; or a credit reporting body⁵⁴, if the Chief Commissioner is satisfied that it is the most recent address available for the person, or
 - c) any other address supplied by the person or their authorised representative to Revenue NSW in connection with a state debt, fine or other matter.

13 Contact guidelines

- 13.1** As noted under Section 12, the Act contains specific provisions dealing with the serving of documents including debt notices and debt recovery orders. However, contact with customers will not be limited to the execution of these formal functions. Revenue NSW is committed to engaging proactively and effectively with customers, so that debts are resolved satisfactorily with as little adverse impact on the customer as possible.
- 13.2** The guidelines in this section therefore provide guidance on how Revenue NSW will interact with customers on a day to day basis when recovering debts.
- 13.3** Contact with a customer or other person is interpreted widely. It includes, but is not limited to, the following:
- a) communications by phone – including circumstances where the recipient (customer or other person) elects to terminate the call, or where a voice message is left on a recording device, or where a message of any kind is delivered to the recipient (for example, text message),
 - b) communications in writing – including all written correspondence (for example, letter, email, text message, fax, social media application or program, instant chat, phone application, or any other similar device),
 - c) communications in person – including face-to-face contact, whether at the home of the customer (or other person), workplace, or other location.

⁵² Provided under section 105 of the *State Debt Recovery Act 2018*

⁵³ Provided under section 106 of the *State Debt Recovery Act 2018*

⁵⁴ Provided under section 107 of the *State Debt Recovery Act 2018*

- 13.4** Communications in person may only be attempted when reasonable attempts to contact a person by phone or in writing have been unsuccessful.
- 13.5** An unsuccessful contact occurs when a phone call is made to a disconnected phone number, postal correspondence is returned undelivered, or an email or text message bounces and is undelivered.
- 13.6** Continuous contact with the customer or other person refers to a chain of contact (for example, an email chain) wherein a series of communications all form part of a single 'thread' of communication. Depending on the circumstances, such a thread may be treated as a single contact, provided:
- a) the customer or other person is voluntarily engaging in the exchange and has not expressed any dissatisfaction in relation to the continuing contact,
 - b) the customer or other person has not been prompted by Revenue NSW for a response but instead has engaged in an interchange of communication whereby the parties take turns to initiate contact between the parties,
 - c) the communication is within a 'reasonable proximity of time',
 - d) the communication is in relation to the same matter, and
 - e) the communication is likely to be anticipated by the customer or other person.
- 13.7** Where a continuous contact occurs within a two-day period, and the person is voluntarily engaging in the exchange, it is to be treated as a single contact for the purpose of these Guidelines.
- 13.8** The customer contact guidelines are adapted from the Debt Collection Guideline published by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission.

Making contact

- 13.9** Revenue NSW will comply with all applicable privacy laws when making contact with customers. When making direct contact, Revenue NSW will confirm the identity of the customer before divulging any information about the debt, the process for its recovery, or before providing any other confidential information.
- 13.10** Limits on disclosing information apply to disclosing information to all third parties including the customer's spouse, partner or family, unless the customer has given consent to the disclosure of the information or if authorised by law.
- 13.11** Revenue NSW staff will take care not to divulge to third parties that they are performing debt recovery functions. When making contact, Revenue NSW

staff will identify themselves as calling from a NSW government agency until they have confirmed they are speaking with the customer.

- 13.12** After establishing a customer's identity, Revenue NSW staff will identify who they are and explain the purpose of the contact.
- 13.13** Revenue NSW will only make contact with a customer electronically or via emerging technology where it reasonably believes that contact will be with the customer and the channel is not shared with other parties (for example, we will not contact a customer via a joint social media channel), unless consent is given by the customer.
- 13.14** Where a person reasonably requests that a particular channel not be used, Revenue NSW will accommodate the request. However, the person must provide contact details for an alternative channel, such as a current residential or mailing address. Where a particular channel is used at the request of the customer, and attempted contacts to that channel are not successful over a 14 day period, the Chief Commissioner may deem that channel as no longer valid and contact the customer using other available channels.

Contact for reasonable purpose only

- 13.15** Revenue NSW will communicate with customers for reasonable purposes only, such as:
- a) providing information to the customer about their account,
 - b) making a demand for payment,
 - c) offering to work with the customer to reach a flexible repayment arrangement,
 - d) accurately explaining the consequences of non-payment, including any debt recovery action that may be taken, interest that may be applied, or debt recovery costs that may be imposed,
 - e) making arrangements for repayment of a debt,
 - f) putting a settlement proposal or alternative payment arrangement to the customer,
 - g) reviewing existing arrangements after an agreed period,
 - h) ascertaining why any earlier attempts to contact the customer have not been responded to within a reasonable period,
 - i) ascertaining why any agreed repayment arrangement has not been complied with,
 - j) investigating whether the customer has changed their residential location without notifying Revenue NSW when there are grounds for believing this has occurred, or

- k) for other similar purposes.

13.16 Revenue NSW may also contact a customer at the customer's request.

Hours of contact

13.17 Contact with customers will be made at reasonable hours, taking into consideration the person's circumstances and wishes. In general, the following contact times are assumed to be reasonable:

Contact by phone	Monday to Friday	7.30 am to 9 pm
	Weekends	9 am to 9 pm
	Public holidays	Nil contact
Face-to-face contact	Monday to Friday	9 am to 9 pm
	Weekends	9 am to 9 pm
	Public holidays	Nil contact
All workplace contact	Customer's normal working hours if known, otherwise from 9 am to 5 pm on weekdays	

13.18 There may be reasons why contact during the above times is unreasonable, or contact outside these times is reasonable. For instance, a customer may ask that contact be made at other or more restricted times due to various reasons, such as:

- a) the customer is a shift worker, or
- b) the customer is responsible for children, or caring for a family member, and contact at certain times is not convenient, or
- c) the customer does not wish to be contacted when other family members are present.

13.19 In these and other such cases, the reasonable wishes of the customer will be respected, and contact limited to the times requested by the customer.

13.20 However, Revenue NSW may alter the time of contact if, after reasonable efforts over a reasonable period of time to contact the customer during normal hours or at the times requested by the customer, Revenue NSW was not able to do so.

Frequency of contact

13.21 Contacts with customers will generally be limited to three times per week, or 10 times per month, unless additional contact is authorised by the customer. Generally, not more than three attempted contacts will be made per day.

When a person is represented

13.22 A customer has the right to have an authorised third party represent him or her in dealings with Revenue NSW about State debts.

13.23 Before Revenue NSW discloses information to a third party, consent must be given by the customer in the form of:

- a) verbal authorisation - such authorisation is acceptable for the purpose of allowing a third party representative to represent a customer or advocate on their behalf about a debt in circumstances when the authorisation can be recorded (a file note of a conversation), or
- b) written authorisation – such authorisation is to include as many of the following details as is reasonably possible:
 - full name, date of birth and residential address of the customer,
 - the full name of the referring agency, account or contract details for which the authorisation is provided,
 - full name, address and contact details (telephone or email) of the authorised party, individual representative or agency,
 - the basis of the authorisation provided – whether the authorisation is ongoing or strictly limited to a specific purpose or timeframe.

13.24 Customers may withdraw or amend consent provided under 13.23 at any time. Such a request may be made verbally or in writing.

13.25 Revenue NSW may contact a represented customer directly if:

- a) the customer requests direct communication, or
- b) the representative does not consent to represent the customer in relation to the debt, or
- c) the representative advises Revenue NSW that they do not have instructions to represent the customer in relation to the debt, or
- d) the representative does not respond to communications within 7 days and Revenue NSW advises the representative in writing that if they do not respond in the next 7 days, contact will be made directly with the customer, or
- e) Revenue NSW advises the customer that it requires a written authority stating that it is only to communicate through the customer's representative, and the customer or representative fails to provide the written authority within a reasonable timeframe (usually 7 days).

13.26 Despite 13.23, Revenue NSW may disclose information to certain third parties who are representing a customer if the third party is:

- a) a Government sector agency such as the Department of Family and Community Services, Legal Aid Commission of NSW or the Ministry of Health, or

- b) a community welfare organisation such as a local land council, an indigenous medical or health centre, a neighbourhood centre, a charity, or other advocacy group registered with Revenue NSW's advocacy service

who has an ongoing association with the customer, and the Chief Commissioner is satisfied the disclosure is directly related to the purpose for which the information was collected and there is no reason to believe that the customer would object to the disclosure.

14 Document approval

Name & position	Date approved	Date published
The Hon Victor Dominello MP Minister for Finance, Services and Property	26/11/2018	30/11/2018

15 Document version control

Version	Status	Date prepared	Prepared by	Comments
1.0	Draft	29/03/2018	M. Baker	Initial draft
1.1	Draft	18/04/2018	M. Baker	Draft incorporating internal feedback
1.2	Draft	27/06/2018	M. Baker	Draft incorporating feedback following consultation with interested parties
1.3	Draft	16/07/2018	M. Baker	Draft incorporating feedback following consultation with interested parties
1.4	Final	20/07/2018	M. Baker	Draft incorporating feedback following consultation with interested parties

16 Review date

The Debt Recovery Guidelines will be reviewed in July 2020.

The Guidelines may be reviewed earlier in response to post-implementation feedback or for other reasons.