

Guidelines for Waiver, Remission and Postponement of Fees

1. Objective

These guidelines are to be used when the officers of the Supreme, District and Local Courts deal with applications for the waiver, remittance or postponement of court fees.

2. Principles

The obligation to pay court fees is based on the principle that a user of a court or a court service should contribute to the cost of that service.

The presumption is that all court fees should be paid, although some fees may be postponed, waived or remitted.

Court Officers should:

- Identify client needs, and respond professionally
- Treat all clients with courtesy and respect
- Be open in their decision making, and provide reasons for their decisions
- Maintain the integrity of the court process at all times
- Ensure access to the court system for all people
- Act within their delegated authority

3. Court fees in the Supreme, District and Local Courts

Civil proceedings: The Civil Procedure Regulation 2005 sets fees in civil proceedings ('the regulation').

Criminal proceedings: The Criminal Procedure Regulation 2005 sets fees in criminal proceedings ('the regulation').

The regulations also set out who is liable for court fees, when payments are due, and gives the court the power to postpone, waive or remit fees.

Other proceedings: Courts deal with other legislation where fees have to be paid. For example, a Local Court can deal with certain proceedings under the Family Law

Act 1975 (Cth). These guidelines will also be used when officers make decisions about the waiver, postponement or remission of fees under other legislation.

4. Who must pay fees?

Hearing allocation fee/hearing fee: A hearing allocation fee is only paid in the Supreme and District Courts. A hearing fee is only paid in the Supreme Court.

The plaintiff usually pays the hearing allocation fee and hearing fee, unless the court orders otherwise.

Civil Procedure Regulation - clauses 9(1) and 10(1)

Other fees: Other fees are to be paid by the person requesting the service or requiring the document to be filed.

Civil Procedure Regulation - clause 7(1)

Criminal Procedure Regulation – clause 15(1)

When an agent is acting for a party: If a person is acting as an agent for a party to any proceedings, the agent and the party are jointly and severally liable for

- Fees for services rendered
- Fees for documents filed
- Fees for hearing allocation, and
- Hearing fees

Civil Procedure Regulation - clauses 7(2), 9(2) and 10(2)

Criminal Procedure Regulation – clause 15 (2)

5. Exemptions

Filing fees: Some agencies are exempt from paying filing fees.

Civil Procedure Act 2005 – section 18(2)

Transcript fees: The Department of Community Services and any other private party are exempt from paying fees for transcripts of Children’s Court care appeals.

The Child Protection Investigation Directorate (CPID) is exempt from paying fees for transcripts and duplicate sound recordings of proceedings involving allegations of child abuse made against its employees.

The Child Protection Investigation Directorate is part of the Department of Education and Training.

6. When are fees due?

Hearing allocation fee: A hearing allocation fee becomes payable:

- Immediately after a date is allocated for hearing the proceedings, or
- When the court notifies the parties in writing of the court's intention to allocate a date for hearing the proceedings,
- whichever occurs first.

Civil Procedure Regulation – clause 9

Hearing fee: A hearing fee becomes payable when the court gives written notice of the amount of the fee to the person liable to pay the hearing fee.

Civil Procedure Regulation - clause 10(4)

Arbitration referral fee: A fee becomes payable when the proceedings are referred to arbitration.

Other fees: Other fees become payable when the document is filed or the service is rendered

In exceptional circumstances, the court can also require any fee to be paid before the document is filed or the service rendered.

Civil Procedure Regulation - clause 8

Criminal Procedure Regulation – clause 10

7. Legally assisted and pro bono parties

Fees before judgment: (Civil proceedings) All fees must be postponed for a pro bono or legally assisted party until judgment has been given.

Civil Procedure Regulation - clauses 12 and 13

Fees before judgment: (Criminal proceedings) All fees must be postponed for a legally assisted party until judgment has been given.

Criminal Procedure Regulation – clause 18

Fees after judgment: (Civil proceedings) Fees are not to be taken from a pro bono or legally assisted party, or are to be remitted if they have already been taken, if:

- Judgment is given against the party, or

Damages are not awarded or nominal damages are awarded, and costs are not awarded in favour of the party.

Civil Procedure Regulation – clauses 12 and 13

Fees after judgment: (Criminal proceedings) Fees are not to be taken from a legally assisted party, or are to be remitted if they have already been taken, if:

- Judgment is given against the party, or
- Judgment is given in favour of the party, but costs are not awarded in his or her favour.

Criminal Procedure Regulation – clause 18

8. Discretion to postpone, waive or remit fees

A decision-maker may waive, postpone or remit any fees payable, subject to such conditions as they see fit.

Note: See section 7 of the guidelines for the procedure for dealing with applications from pro bono or legally assisted persons.

Civil Procedure Regulation – clause 11

Criminal Procedure Regulation – clause 17

9. Application procedure

Pro bono or legally assisted parties: Pro bono or legally assisted parties must either;

- Lodge a letter from their legal practitioner with their application form, which certifies that they are legally assisted, or a pro bono party
- Have their legal practitioner sign the application form, or
- Give details of their Legal Aid reference number, if they are a legally assisted person

Other applications: All other people who wish to apply to have their fees waived, postponed or remitted must lodge;

- An application form
- Copies of documents to support their claim such as payslips, tax returns, Centrelink documents, medical certificates etc

The application form and the copies of the documents must be verified by statutory declaration.

The court may ask for further documents to support the application where necessary.

10. Decision-making procedure

The application should be considered within 2 working days.

When considering the application, the decision-maker must consider the applicant's financial, social and emotional needs.

Fees can be postponed, waived, or remitted subject to such conditions as the court thinks fit.

The applicant must be notified in writing of the decision and the reasons for the decision.

The applicant must be told that he or she can apply for a review of the decision.

The court must keep a record of all applications and decisions on those applications.

11. Exercising the discretion to postpone

Relevant considerations: See section 7 of the guidelines for the procedure for dealing with applications from legally assisted or pro bono parties.

All other applications must be considered on their merits.

The decision-maker can consider any relevant matter including:

- Any orders or recommendations made by the court e.g. orders in relation to vexatious litigants and recommendations to remit fees
- Whether the payment of the fee will cause the applicant undue financial hardship
- The reason why the service is required
- The need for procedural fairness for litigants in person

- Whether the person is under 18 years of age, if the application relates to fees being charged in criminal proceedings
- Whether the person is in custody
- Any compassionate grounds
- Whether a viable alternative exists for providing the service e.g. the applicant can view the documents or transcripts at the registry

Applications generally granted: Applications will generally be granted where the applicant is;

- Dependent on social security payments and lacks sufficient income and capital to either pay a fee or to obtain credit on reasonable terms to pay a fee
- Otherwise indebted to an extent that he or she is incapable of obtaining credit on reasonable terms to pay a fee
- Has been granted legal aid.

Applications generally refused: Applications will generally be refused is the applicant;

- Has, in the opinion of the decision-maker, the ability to pay the fee or to obtain credit on reasonable terms to pay the fee
- Is a corporation
- Has, without a reasonable excuse, defaulted in paying a previously postponed fee
- Has made false or misleading statements or omissions in an application or in discussions with court staff in relation to an application
- Has, in the preceding 12 months, been granted a postponement or a waiver of a fee to initiate proceedings, and the decision-maker is not satisfied that special factors exist to warrant another postponement or waiver of fees.

An application may also be refused where the fee in question does not relate to an essential step in the proceedings.

Examples of how the discretion might be exercised:

Example 1 - A is on a disability pension and has assets. A has brought a proceedings in relation to a claim for personal injuries arising from a motor vehicle

accident. The proceedings are still pending. If A succeeds in the proceedings, A may be entitled to a costs order. This would allow A to recover the court fee from the losing party. In this situation, the fee would usually be postponed until the conclusion of proceedings. A could make another application if a costs order were not made at the conclusion of the proceedings.

Example 2 - B is a prisoner and has no assets and no real income. B seeks a copy of the transcript of the trial. If B is found not guilty at trial, the court is unlikely to order costs. The fee would usually be waived.

Example 3 – C has been declared a vexatious litigant and has no assets or income. C wishes to commence proceedings against another person. As C has been declared a vexatious litigant, he or she would be required to pay the fee unless he could demonstrate that there is real merit in his or her claim.

12. Numerous Applications

When considering an application from a person who has made numerous applications to postpone, remit or waive fees, the decision-maker;

- Can consider whether special factors apply to warrant another postponement, remission or waiver of fees
- Must recognise the need to protect the integrity of the court's process and the applicant's right to access justice.

See section 7 of the guidelines for the procedure for dealing with an application from a legally assisted or pro bono party.

13. Options for a successful application

Part payment: If a part payment of the fee is offered, the decision-maker should;

- Accept the part payment, and
- Consider the written application to postpone or waive the balance of the fee.

Postponement: It is usually preferable to postpone payment of a fee until after the proceedings are finalised instead of waiving the fee.

Waiver: It may be appropriate to waive a fee where;

- The outcome of the proceedings will not involve an award of money and the applicant demonstrates that payment of the fee would cause undue hardship

- The applicant's circumstances and the nature of the proceedings mean that it would be oppressive to ever require the applicant to pay the fee.

14. 14. Review of the decision

If the applicant wishes to dispute a decision, the applicant may apply to have the decision reviewed. An applicant may give additional material to the reviewing officer before the review decision is made. The review decision should be given within 5 working days.

The applicant must be notified of the review decision in writing. There will be no further administrative review of the review decision.

15. 15. Payment of postponed fees

Postponed fees are generally payable at the conclusion of proceedings. The court can ask an applicant to pay all postponed fees as soon as any one of their proceedings are finalised, whether or not the proceedings are related. The applicant must be advised of these conditions when they are advised about the postponement.

16. Collection of postponed fees

The court must review all postponed and remitted fees each month and send a reminder letter seeking payment of any overdue fees. If no reply is received after 30 days, the court must send a further letter of demand.

If there is no reply after a further 30 days, the court must send a final letter of demand, which will advise the applicant that legal action will be taken to recover the outstanding fee if payment is not received within 14 days.

The court can consider a reasonable request to pay the debt by instalments.

17. Writing off debts

NSW Treasury Directions set out the conditions for the writing off a debt. A debt is only regarded as irrecoverable and can be written off if:

- The whereabouts of the person are unknown
- It is not financially viable to attempt to recover the money due to the relatively small value of the debt Recovery action is not warranted at the time due to the medical, financial, or domestic circumstances of the particular person

- Legal proceedings through the courts have proved, or on legal advice, would prove unsuccessful.

If the debt is to be written off, the court must:

- Note the details of the debt that has been written off in the register of postponed, waived or remitted fees (see section 18)
- Forward details of all written off debts as at 30 June each year to NSW Treasury.

18. Reporting on waived, postponed or remitted fees

A register must be kept that includes the amount of fees that have been postponed, waived or remitted.

- After 30 June each year, the court must send a report to the Director, Financial Services, Attorney General's Department containing the following information: The dollar value of waived fees for the financial year ending 30 June
- The dollar value of postponed fees for the financial year ending 30 June
- The dollar value of remitted fees for the financial year ending 30 June
- The dollar value of postponed fees that have been recovered in the financial year ending 30 June
- Details of all debts written off each year including the name and address of the debtor and the dollar value of the debt.

19. Delegation

The senior judicial officer of each court will issue an instrument in writing which sets out who can make decisions on:

- Applications to postpone, remit or waive fees
- Applications to review a decision in relation to postponing, remitting or waiving a fee.

Civil Procedure Act – s. 13

Criminal Procedure Regulation – clause 17

20. Definitions

Legally assisted party: Is a party who is receiving legal assistance through a community legal centre that complies with the requirements of s 48H of the Legal Profession Act 1987 or s 240 of the Legal Profession Act 2004.

Civil Procedure Regulation – clause 3

Criminal Procedure Regulation – clause 18

Pro bono party: Is a party represented under the provisions of a pro bono scheme of the Law Society of New South Wales or the Bar Association of New South Wales, or under a pro bono scheme established by rules of court, where the solicitor or barrister acting for that party has;

- Certified in writing to the registrar that the party is being represented under a pro bono scheme, and
- Undertaken in writing to the registrar:
 - To pay the filing fee for the originating process
 - To pay hearing allocation fees or hearing fees on behalf of the party in those proceedings

The legal practitioner's undertaking is to be given subject to the exemptions referred to in section 7 of these guidelines.

Civil Procedure Regulation – clause 3