

Waiver, deferral and refund of Court Fees

Section 15 Court Procedures Act 2004

This practice note is concerned with requests about payment of determined fees for ACT Courts and the ACT Civil and Administrative Tribunal (ACAT).

Statutory provisions

1. Section 13 of the *Court Procedures Act 2004* allows the Attorney-General to determine the fees payable in relation to proceedings in, and services or facilities provided by, the ACT Courts and ACAT. The current determination is the *Attorney General (Fees) Determination 2012*, as amended.
2. Under section 15(2)(b) of the *Court Procedures Act 2004* the Registrar of a Court or of the ACAT may waive a court or tribunal fee. Waivers may be in part or whole, where the Registrar considers that payment of the full fee would result in hardship to the applicant.
3. Section 15(1) of the *Court Procedures Act 2004* enables a determined fee to be remitted, refunded or deferred in accordance with the determination that determined the fee. Items 1313 and 1018 of the current determination permit the Registrar of a Court or of ACAT to defer payment of a fee, and items 1019 and 1314 provide that the Registrar may remit or refund a fee that has been paid.
4. Section 15 of the *Court Procedures Act 2004* also provides for other situations where court fees are not payable or the person is exempt from application of the fee.
5. Matters relating to the payment of fees at first instance are administrative and as such within the exclusive power of the Registrar of the ACAT or of the Court. The ACAT's and the Courts' powers in relation to fees are limited to awarding costs in a particular

matter; directing that a hearing fee should be paid by a particular party; or conducting a review of a decision about fees made by the Registrar.

Fee waivers

1. Any person who would be liable to pay a fee may apply for waiver on the grounds of 'hardship' – this includes individuals, corporations, unincorporated associations, etc.
2. The 'hardship' usually relied upon is that if the person is required to pay the fee the person will incur serious financial difficulty, although other hardship may be referred to.
3. Because the Registrar can only waive a fee if he or she is satisfied that requiring payment of the fee or part of the fee would impose 'hardship', each case must be determined on its merits, taking all relevant circumstances into account.
4. The Registrar will have regard to the person's financial position taking into account the person's income, expenses, assets and liabilities, the income of any partner or dependants of the person and the amount of the fee being waived. Supporting documentation such as bank statements or pay slips should accompany the request. For a corporation the Registrar may take into account the financial position of the corporation including the structure and ownership of the company. Documentation such as bank statements, profit and loss statements or business activity statements may be required to support a request.
5. If the Registrar is satisfied that payment of any part of the fee would cause hardship, the Registrar will waive payment of the whole fee.
6. If the Registrar is satisfied that payment of part of the fee would not cause hardship the Registrar will waive that part of the fee that would result in hardship. In such cases the person applying for the fee waiver is liable to pay the remainder of the fee.
7. The Registrar may refuse to waive a fee if funding is reasonably available from another source.

8. Under item 1315 of the *Attorney General (Fees) Determination 2012* the Registrars of the Supreme Court and the Magistrates Courts are required to impose a minimum filing fee of \$100 and \$50 respectively unless satisfied that imposing this minimum fee would result in hardship.
9. The following are examples of where a person may or may not be granted a fee waiver:
 - a. A person on a Centrelink payment with little or no assets would be likely to receive a fee waiver.
 - b. A person with a low income, with minimal assets and a number of dependants who are not in receipt of income would be likely to receive a fee waiver.
 - c. A person with a low income but some disposable fortnightly income is unlikely to obtain waiver of the entire fee.
 - d. A person with a low income residing with a partner who earns a higher income is unlikely to receive a fee waiver unless they have a number of dependants and high non-discretionary expenditure with no assets.
10. If the Registrar is satisfied that the payment of the fee immediately would result in hardship but that hardship may be avoided if the fee is deferred for a period of time, it is appropriate to defer payment of the fee rather than waive payment.

Fee Deferral

11. Payment of a fee may be deferred by the Registrar under items 1018 and 1313 of the *Attorney General (Fees) Determination 2012* where he or she is satisfied that payment cannot be made at the required time, but payment could be made at a future date. When exercising this discretion the Registrar will take into account all relevant circumstances such as the person's current and future financial situation, and resources available to the at the time payment is required. Supporting documentation will usually be required.

12. Deferral of payment may be allowed for up to 14 days, or such longer period as is necessary or appropriate in the interests of justice.
13. Deferral of payment may be made in relation to the whole or part of a fee; in this way a person may seek to pay a fee by instalments over a period of time.
14. Where a person has applied for a fee waiver on hardship grounds the Registrar may decide to defer payment of the fee or part of the fee rather than grant a waiver at that time. In deciding whether to defer payment the Registrar will take into account the nature of the case in addition to the person's current and future financial circumstances.
15. Deferral of the payment of a fee may also be appropriate where the Registrar is of the view that, if the person is successful in the litigation to which the fee relates, the person will be in a position to pay the fee when the litigation is concluded. If a fee is deferred on this basis, and the person is unsuccessful, the person may subsequently seek that the fee be waived on the grounds of hardship.
16. The following are examples of where a person may be granted a deferral of payment of a fee:
 - a. A person receiving regular income, but with insufficient savings to completely pay a fee at the time it is due, is likely to be allowed to pay the fee by instalments (payment of parts of the fee are deferred to different dates);
 - b. A person with insufficient savings to completely pay a fee at the time it is due, but who will in the future receive income sufficient to enable the whole fee to be paid, is likely to be granted a deferral of the payment of the entire fee; and
 - c. A person lodging an application remotely (by email or facsimile) due to a filing deadline, who will not be present in the ACT until after that deadline has passed, is likely to be granted a deferral until the person is able arrange payment of the fee either in person or by post.

Remission and refund of fees

17. Under items 1019 and 1314 of the *Attorney General (Fees) Determination 2012* the Registrar of the ACAT or the Court may remit or refund a fee which has been paid, either in whole or in part, where the circumstances warrant and it is in the interests of justice to do so.

Requests for fee waiver, deferral, remission and refund

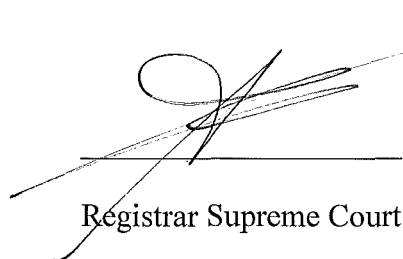
18. The approved forms to make a request in relation to waiver, deferral, remission and refund of a fee are available on the Court and the ACAT websites. Inquiries should be directed to the relevant registry.

19. The Courts and the ACAT endeavour to consider requests in relation to fees within two working days of receipt.

20. If a request about fees is not granted in any respect, the person who made the request will be given written notice of that decision.

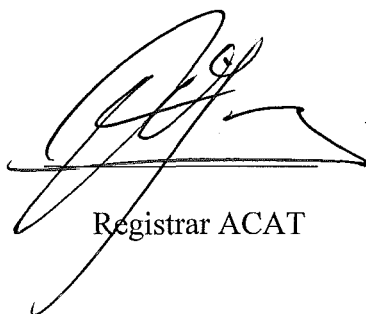
Review Rights

21. Sections 18A and 18B of the *Court Procedures Act 2004* provide the right to be given a statement of reasons for the refusal of a request about fees, and also provide rights of review of that decision. The written notice of decision sets out how to seek a review of the decision, and will usually include the reasons for refusal.



Registrar Supreme Court

Hugh Jorgensen
Registrar Magistrates Court



Registrar ACAT

Dated: 31 October 2012

