



## District Courts Fees Amendment Regulations (No 3) 2001

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 9th day of October 2001

Present:

Her Excellency the Governor-General in Council

Pursuant to section 123 of the District Courts Act 1947, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

#### Contents

1	Title		4C	Recovery of postponed fee
2	Commencement		4D	Power to refund fees
3	Fees of court			
4	New regulations 4A to 4D inserted	5		Schedule amended
	4A			Power to waive fees
	4B			Payment of fee may be postponed pending determination of application for waiver or review

---

### Regulations

#### 1 Title

- (1) These regulations are the District Courts Fees Amendment Regulations (No 3) 2001.

- (2) In these regulations, the District Courts Fees Regulations 2001<sup>1</sup> are called “the principal regulations”.

<sup>1</sup> SR 2001/106

## 2 Commencement

These regulations come into force on 15 October 2001.

## 3 Fees of court

Regulation 4 of the principal regulations is amended by adding, as subclause (2), the following subclause:

- “(2) Subclause (1) is subject to regulations 4A and 4B.”

## 4 New regulations 4A to 4D inserted

The principal regulations are amended by inserting, after regulation 4, the following regulations:

### “4A Power to waive fees

- “(1) A person (the **applicant**) otherwise responsible for the payment of a fee required in connection with a proceeding or an intended proceeding may apply to a Registrar for a waiver of the fee.
- “(2) The Registrar may waive the fee payable by the applicant if satisfied,—
- “(a) on the basis of 1 of the criteria specified in subclause (3), that the applicant is unable to pay the fee; or
  - “(b) that the proceeding,—
    - “(i) on the basis of 1 of the criteria specified in subclause (4), concerns a matter of genuine public interest; and
    - “(ii) is unlikely to be commenced or continued unless the fee is waived.
- “(3) For the purposes of these regulations, an applicant is unable to pay the fee sought to be waived if—
- “(a) the applicant has not been granted legal aid in respect of the matter for which the fee is payable; and
  - “(b) the applicant—
    - “(i) is dependent for the payment of his or her living expenses on a benefit of a kind specified in any of paragraphs (a) to (e), (h), and (j) of the definition of **income-tested benefit** in section 3(1) of the Social Security Act 1964; or

- “(ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation or a veteran’s pension under the Social Welfare (Transitional Provisions) Act 1990; or
  - “(iii) would otherwise suffer undue financial hardship if he or she paid the fee.
- “(4) For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—
- “(a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
  - “(b) a proceeding that—
    - “(i) raises issues of significant interest to the public or to a substantial section of the public; and
    - “(ii) has been or is intended to be commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.
- “(5) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Department for Courts unless, in a particular case, the Registrar considers that an application in that form is not necessary.

“4B **Payment of fee may be postponed pending determination of application for waiver or review**

- “(1) A Registrar may, on application by a person who is awaiting the determination of an application under regulation 4A(1) or section 123A of the District Courts Act 1947, postpone the payment of the fee to which the application relates until the date on which the person is notified of the determination.
- “(2) A Registrar may exercise the power under subclause (1) if satisfied that the person awaiting the determination of his or her application would be prejudiced if the matter to which the fee relates did not proceed before the determination.
- “(3) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Department for Courts unless, in a particular case, the Registrar considers that an application in that form is not necessary.

**“4C Recovery of postponed fee**

- “(1) This regulation applies to a fee (the **fee**) that has been postponed under regulation 4B.
- “(2) If the effect of a determination under regulation 4A or section 123A of the District Courts Act 1947 is that the fee is not to be waived, the fee—
- “(a) must be paid, without delay, to the Registrar; and
  - “(b) is recoverable as a debt due to the Crown in any court of competent jurisdiction.
- “(3) Following a determination that has the effect referred to in subclause (2), the person responsible for paying the fee may not take a step in the proceeding to which the fee relates unless the fee is paid.
- “(4) This regulation has effect subject to regulation 4B during any period that the question of the waiver of the fee is the subject of a pending application under section 123A of the District Courts Act 1947.”

**“4D Power to refund fees**

- “(1) A Registrar may, on application made to him or her, refund a fee that has already been paid if satisfied that—
- “(a) no application, under regulation 4A, for a waiver of the fee was made; and
  - “(b) the fee would have been waived, in accordance with regulation 4A, had such an application been made; and
  - “(c) the criteria that would have justified that waiver still apply at the date of the application for the refund.
- “(2) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Department for Courts unless, in a particular case, the Registrar considers that an application in that form is not necessary.”

**5 Schedule amended**

The Schedule of the principal regulations is amended by omitting from the second column of item 1 the expression “100.00”, and substituting the expression “120.00”.

Marie Shroff,  
Clerk of the Executive Council.

---

### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 15 October 2001, amend the District Courts Fees Regulations 2001, which come into force on the same date.

The regulations increase the fee for filing the original document for commencing a proceeding from \$100 to \$120.

The regulations also prescribe the criteria for determining whether court fees may be waived. A person is eligible for a waiver if he or she is not legally aided and depends on an income-tested benefit, or depends wholly on New Zealand superannuation or on a veteran's pension, or if he or she would otherwise suffer undue financial hardship if required to pay the fee. Fees may also be waived in the case of proceedings that concern matters of genuine public interest and that would be unlikely to be commenced or continued without a waiver. For the purposes of the regulations, a proceeding of that nature is one that is to determine a question of law of significant public interest, or one that is brought by a public-interest organisation and that raises issues of significant public interest.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 11 October 2001.

These regulations are administered in the Department for Courts.

---