



## Summary Instalment Orders (District Courts) Amendment Rules 2004

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 26th day of May 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 152 of the Insolvency Act 1967 and section 122 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 rules.

### Contents

1	Title	33B	Payment of fee may be postponed pending determination of application for waiver or review
2	Commencement	33C	Recovery of postponed fee
3	Fees and costs	33D	Power to refund fees
4	New rules 33A to 33D inserted		
	33A Power to waive fees		

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### Rules

#### 1 Title

- (1) These rules are the Summary Instalment Orders (District Courts) Amendment Rules 2004.

- (2) In these rules, the Summary Instalment Orders (District Courts) Rules 1970<sup>1</sup> are called “the principal rules”.

<sup>1</sup> SR 1970/271

## 2 Commencement

These rules come into force on 1 July 2004.

## 3 Fees and costs

Rule 33 of the principal rules is amended by inserting, after subclause (1), the following subclause:

“(1A) Subclause (1) is subject to rules 33A and 33B.”

## 4 New rules 33A to 33D inserted

The principal rules are amended by inserting, after rule 33, the following rules:

### “33A 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 rules, an applicant is unable to pay the fee sought to be waived if—
- “(a) the applicant has been granted legal aid in respect of the matter for which the fee is payable; or
- “(b) the applicant has not been granted legal aid in respect of the matter for which the fee is payable and 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 under the New Zealand Superannuation Act 2001 or a veteran’s pension under the War Pensions Act 1954; or
  - “(iii) would otherwise suffer undue financial hardship if he or she paid the fee.
- “(4) For the purposes of these rules, 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 Secretary for Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

“33B **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 rule 33A 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 Secretary for Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

**“33C Recovery of postponed fee**

“(1) This rule applies to a fee (the **fee**) that has been postponed under rule 33B.

“(2) If the effect of a determination under rule 33B 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 rule has effect subject to rule 33B 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.

**“33D 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 rule 33A, for a waiver of the fee was made; and

“(b) the fee would have been waived, in accordance with rule 33A, had that 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 Secretary for Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.”

Diane Morcom,  
Clerk of the Executive Council.

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### **Explanatory note**

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

These rules, which come into force on 1 July 2004, amend the Summary Instalment Orders (District Courts) Rules 1970 by inserting new rules 33A to 33D dealing with the waiver, postponement, and refund of court fees.

*Rule 33A* provides that a person who is unable to pay a fee that is required in connection with a proceeding or an intended proceeding may apply to a Registrar for a waiver of the fee. A Registrar may waive the fee payable by the applicant if he or she is satisfied that the applicant is unable to pay the fee, or that the proceeding concerns a matter of genuine public interest and is unlikely to be commenced or continued unless the fee is waived.

*Rule 33B* provides that a person who is awaiting the determination of an application for a waiver of a fee, or a review of a Registrar's decision, may apply to a Registrar to have the payment of the fee postponed. A Registrar may postpone the payment of a fee if he or she is satisfied that the applicant would be prejudiced if the matter to which the fee relates did not proceed before the determination.

*Rule 33C* provides that if it is determined that a fee is not to be waived, the fee is recoverable as a debt to the Crown. The fee must be paid without delay and no further step may be taken in the proceeding to which the fee relates until the fee is paid.

*Rule 33D* provides that a person may apply to the Registrar for a refund of a fee that has already been paid. A Registrar may refund a fee that has already been paid if he or she is satisfied that no application for a waiver of the fee was made and that, had such an application been made, the fee would have been waived. The Registrar must also be satisfied that the criteria that would have justified the waiver still apply at the date of the application for a refund.

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**Summary Instalment Orders (District  
Courts) Amendment Rules 2004**

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These rules are administered in the Ministry of Justice.

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