



# AGENCY GUIDANCE

## Fee Relief due to COVID-19 impact

### Scope

Fee Relief includes waivers, reductions, or deferral of the payment of a fee or a charge yet to be imposed. It also applies to fee refunds, waivers of debt, modification of payment terms, or credit, for fees or charges already paid.

This guidance relates only to charges classified as non-taxation revenue. This includes regulatory (cost recovery fees or levies) charges or non-regulatory charges (resource or commercial charges).

For charges that are classified as taxation revenue please seek advice from the Treasury.

### Principles

There are a number of principles that an entity should take into account when determining whether Fee Relief should be provided.

- Appropriateness – should be proportionate to the impact of the COVID-19 pandemic and there is evidence a sector has been impacted and Fee Relief will assist economic recovery
- Authority – relevant policy and legislative authorities are required for fee relief;
- Fiscal impact – the full financial impact to the Government of Fee Relief should be estimated
- Recovery pathway – there needs to be a plan to return to normal charging arrangements.

The same principles apply whether an entity is considering providing Fee Relief to an individual fee payer or a class of fee payers.

A support tool is provided at **Appendix A** to assist entities with the process of considering Fee Relief and addressing the above principles.

### Key points

#### 1. Appropriateness considerations

*Fee Relief should be proportionate to the impact of the COVID-19 pandemic and there is evidence a sector has been impacted and Fee Relief will assist economic recovery*

In considering appropriateness of Fee Relief an entity should be assessing:

- the scope, significance and potential length of impact, including whether there has been an impact across a whole sector
- how the Fee Relief will contribute to the sector's economic recovery, including whether it will provide material relief to individual fee payers (i.e. will the Fee Relief be \$1 or \$1,000 for a fee payer – will fee relief reduce the economic strain on an individual or organisation)
- whether demand for the activity has changed (e.g. if it is a demand driven activity then fee payers may not be accessing the activity and Fee Relief may not assist. However, Fee Relief may stimulate demand for an activity which the Government wishes to promote)

- whether other forms of relief are being provided by the Government (i.e. government stimulus or regulatory relief and providing fee relief in addition to other government assistance may not be appropriate).

Where an entity has assessed that there is limited impact of COVID-19 on individuals and organisations being charged, and/or Fee Relief would not assist economic recovery, then entities should continue to charge as normal, in line with existing policy and legislative requirements.

### ***An illustrative hypothetical example***

*A particular industry is subject to regulation and regulatory (cost recovery) fees and charges. Operators in the industry are licensed and the relevant department monitors operators to ensure they comply with license conditions.*

*The sector has evidence that COVID-19 has had a material impact on businesses in the sector. It has affected financial viability of all businesses in the sector and is expected to continue for 2 years. The industry is a significant contributor to the Australian economy.*

*Fee Relief will assist economic recovery of the industry as it will remove some financial stressors for existing commercial operators and potentially stimulate demand for new operators to come on board. Regulatory charges are currently \$1,000 for an annual license and \$500 for annual monitoring and compliance.*

*Some operators are leaving the industry and annual license renewals have dropped off. The government wants to stimulate activity in this area and providing Fee Relief may retain those operators in this industry and stimulate new operators to enter the industry.*

*The Government is providing some regulatory relief by streamlining the licensing process and targeting annual compliance to only high risk operators. The Government is providing \$1,000 to all Australians to purchase services or products from the sector – this will increase demand for struggling operators and contribute to the overall economic recovery of Australia.*

*In this example, some form of fee relief would certainly be warranted for the annual licence fee for existing registered operators. Noting that improved regulatory processes are being established and compliance is targeting high risk operators only, there is certainly justification for full or partial fee relief of the annual monitoring and compliance charge for all but high risk operators.*

## **2. Authority Considerations**

*Relevant policy and legislative authorities are required for fee relief*

### Policy Authority

A decision to provide Fee Relief for regulatory charges requires Government policy authority from the Prime Minister or Cabinet through a New Policy Proposal (NPP); a decision to provide Fee Relief for non-regulatory charges may require Government policy authority. This is because any decision that

impacts on the Government's estimates or changes the intent of a previous policy decision, requires policy authority from Government<sup>1</sup>.

*Where Government has agreed that industry should be charged for a regulatory charging activity on a full cost recovery basis, a decision to provide Fee Relief will require a Government decision because:*

- *an amendment is being made to an existing policy decision of government;*
- *and*
- *the decision will have an impact on the Government's agreed estimates.*

*For an existing resource or commercial charging activity, a decision to provide Fee Relief will require a Government decision if:*

- *the policy decision to charge for the activity has been made by the Government; and/or*
- *the decision will have an impact on the Government's agreed estimates and/or previous policy decision.*

Ministers will need authority from the Prime Minister or Cabinet to bring forward an NPP to seek policy authority for the Fee Relief. The NPP will need to address the principles by outlining:

- how the industry has been impacted by COVID-19
- how the Fee Relief will contribute to the sector's economic recovery
- the impact on the individual fee-payer (i.e. will it provide material relief)
- what fiscal impact this will have on the Government's revenue
- for what period the Fee Relief will be in place
- legislative authority or amendments required for Fee Relief
- how the fees will be return to normal charging arrangements (including evidence-based triggers the entity will use to determine when fees can be returned).

In some circumstances the Minister, Accountable Authority, or delegate will have the authority to provide Fee Relief. The above points should be taken into account in determining whether Fee Relief should be provided.

#### Legislative Authority

Most fees and charges have a legislative basis. When policy authority is in place, an entity must also be guided by its existing legislation/s in respect to offering Fee Relief.

*It may be necessary to have explicit legislative authority in place to provide a fee waiver or deferral. For a fee reduction, entities may need to re-issue the legislative instrument that outlines the charges.*

Entities may wish to seek legal advice.

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<sup>1</sup> See paragraph 1.1 of the Budget Process Operational Rules. Also, reproduced later in this guidance.

*For Amounts Already Owing*

If there is no specific provision within the entity's legislation for waivers of amounts owing, or modification of payment terms, these are covered under section 63 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

*Modification of Payment Terms*

- Under s63(1)(b) the Finance Minister may authorise a change to the terms and conditions on which an amount owing to the Commonwealth is to be paid.
- The Finance Minister has delegated this power to the Accountable Authorities of non-Corporate Commonwealth entities under Part 9 of the [PGPA \(Finance Minister to Accountable Authorities of non-corporate entities\) Delegation 2014](#). This means that Accountable Authorities (or delegate) can extend payment terms for amounts that have already been raised.

*Waivers of Commonwealth debt*

- Under s63(1)(a) the Finance Minister may waive an amount owing to the Commonwealth.
- The waiver power has not been delegated but is administered by the Department of Finance in accordance with [RMG 401 Requests for Discretionary Financial Assistance under the PGPA Act](#). This means that a waiver of debt can only be provided by the Finance Minister, please contact the Special Claims Team in Finance for further information.
- Waivers are considered on a case by case basis, and are considered a remedy of last resort.

**3. Fiscal Impact Considerations**

*The full financial impact to the Government of Fee Relief should be estimated.*

To support Budget planning, entities need to consider a range of issues when determining the full financial impact to the Government of providing Fee Relief including:

- the immediate revenue impact must be estimated and the ramifications articulated.
- whether demand for the activity been affected. How this will affect the expenses for the activity? How Fee Relief will impact on expected demand for the activity?
- whether regulatory activity been scaled back to provide regulatory relief to a sector? How will this affect expenses and revenue for the activity?
- whether the entity retains the receipts? If so, will budget funding be needed to supplement ongoing activities or an operating loss be applied for?
- What period of time will Fee Relief be provided?

Reduction in demand issues – Separate to Fee-Relief considerations, where an entity is experiencing a reduction in demand for revenue raising activities due to the impact of COVID-19 and this is impacting on the entity's financial situation (including a running a potential operating loss or affecting the entity's financial health) they should talk to the relevant Agency Advice Unit early to determine the appropriate steps that should be taken.

**4. Recovery Pathway**

*There needs to be a plan to return to normal charging arrangements*

Entities are required to develop a Recovery Pathway for the return to normal charging arrangements.

Entities should plan for a methodical recovery phase, including where appropriate, the use of appropriate evidenced-based metrics to support the pathway to recovery. That is, the recovery phase may be flexible and specific/targeted to individual sectors, but should not favour individual businesses.

If relief is in the form of an indexation pause, then there should be a clearly defined date to review or end the indexation pause.

The Recovery Pathway should be consistent with Government agreed parameters for Fee Relief and outline steps in returning to normal charging arrangements, including revised policy authority; legislative amendments; amending forward revenue estimates.

## Other Issues

### Indexation considerations for fees and charges

Generally, where there is a requirement to annually increase a fee or charge (e.g. in line with an Index, including the Consumer Price Index) it is incumbent on the entity to comply with existing policy authority and legislation. If the entity believes there is a case to provide Fee Relief, then policy authority, on whether Fee Relief should be provided, will need to be sought from the original decision maker.

- For regulatory charges this will be the Government.
- For non-regulatory charges, such as resource or commercial charging activities, this can be the Minister, Accountable Authority or delegate, if there is no impact on forward revenue estimates agreed by Government.

In addition, entities will need to consider the level of fee discretion within existing legislation and whether legislative changes would need to be made to provide Fee Relief (i.e. does current legislation have the ability to provide fee waivers or reductions). For charges that are not based in legislation (i.e. they are based in contract) then the entity may have discretion to modify charges and will need to consider whether the terms of the contract allow for discretion

### Policy Proposals

Ministers must bring forward NPPs to seek authority for policy changes and impact on either revenue (through provision of Fee Relief) or expenses (additional Budget funding to support ongoing activity). This is the case even if there is relevant legislation to support such a change.

The Budget Process Operational Rules define a policy proposal as any proposal brought forward by Ministers that require a Government decision (irrespective of whether the relevant legislation permits such a policy change) such as revenue, expense and capital new policy proposals (including financial assets and guarantees) that:

- a) have a certain or potential financial impact within the forward estimates period or beyond. Financial impacts include changes to the fiscal balance, underlying cash balance, headline cash balance, gross debt, net debt or net worth (including moving expenditure from outside into the forward estimates);
- b) have changes in expenses offset by changes in other expenses or user charges (revenue);
- c) change the level of a financial cap or modify eligibility criteria for a capped demand-driven program;
- d) create a legal, financial, contingent or other commitment for the Commonwealth; or
- e) change the intent of a previous policy decision or position

## Key contacts

- Relevant Agency Advice Unit in Finance
- Charging Framework: Charging Policy Team – [chargingpolicy@finance.gov.au](mailto:chargingpolicy@finance.gov.au)
- Waivers of debt and modification of payment terms: Discretionary Payments Team - [sfc@finance.gov.au](mailto:sfc@finance.gov.au)
- Accounting considerations: Accounting Policy Team – [accountingpolicy@finance.gov.au](mailto:accountingpolicy@finance.gov.au)

## Resources and related advice

- RMG 204 – Australian Government Charging Framework
- RMG 401 - Requests for discretionary financial assistance under *the Public Governance, Performance and Accountability Act 2013*
- Frequently Asked Questions – Accounting Impacts of COVID-19 and related matters
- EM 2019/28 - Budget Process Operational Rules
- EM2020/20 - Operating losses arising from the impacts of COVID-19

## FEE RELIEF SUPPORT TOOL

The Fee Relief Support Tool provides a step-by-step process in determining whether Fee Relief should be provided.

### FEE RELIEF OPTIONS

Have I imposed the charge yet?	
<p>Yes - I have already imposed the charge</p> <p>Options available include:</p> <ul style="list-style-type: none"> <li>• Fee Refund</li> <li>• Credit for future services</li> <li>• Extension of payment terms</li> <li>• Waiver of debt*</li> </ul>	<p>No - I have not imposed the charge yet</p> <p>Options available include:</p> <ul style="list-style-type: none"> <li>• Fee reduction – fee still imposed but at a lower amount</li> <li>• Fee waiver – not to be paid at all</li> <li>• Fee deferral – to be paid at a later date</li> </ul>

\*A waiver of debt can only be provided by the Finance Minister, please contact the Special Claims Team in Finance for further information [sct@finance.gov.au](mailto:sct@finance.gov.au)

### PRINCIPLES

Any Fee Relief provided by entities for a regulatory, resource or commercial charging activity should consider the following principles:

- **Appropriateness** – *Fee Relief should be proportionate to the impact of the COVID-19 pandemic and there is evidence a sector has been impacted and Fee Relief will assist economic recovery*
- **Authority** – Fee Relief requires appropriate policy and legislative authority
- **Fiscal impact** – the full financial impact to the Government of Fee Relief should be considered and justified
- **Recovery pathway** - there need to be a pathway to return to normal charging arrangements.

The same principles apply whether an entity is considering providing Fee Relief to an individual fee payer or a class of fee payers.

### 1. APPROPRIATENESS OF FEE RELIEF

Has the sector being charged been impacted by COVID-19?		
Yes		No
What is the scope, significance and potential length of impact? Has the impact been on all parts of the sector or only a specific sector?		Fee Relief not warranted
<b>Significant impact</b>	<b>Partial impact</b>	
Full Fee Relief may be warranted	Partial or targeted Fee Relief may be warranted	

Will the proposed Fee Relief contribute to the sector’s economic recovery?		
<p><b>Yes</b> Fee Relief may be warranted. Entities will need to consider how this will be measured.</p>		<p><b>No</b> Fee Relief not warranted</p>
Has demand for the activity changed as a result of COVID-19?		
<p><b>Yes – it has reduced</b></p>	<p><b>Yes – it has increased</b></p>	<p><b>No</b></p>
<p>In any of the above cases Fee Relief may still be warranted - the causes for the change in demand need to be examined. For example, do you want to stimulate demand for the activity as it will support economic recovery or fulfil other government policy objectives?</p>		
<p><b>Are there other forms of relief being provided to the sector impacted by COVID-19?</b> For example:</p> <ul style="list-style-type: none"> <li>• is Government stimulus funding being provided to the sector in any form?</li> <li>• for regulatory charging activities - is regulatory relief already being provided e.g. reducing the level of ongoing monitoring and compliance activities, which will reduce the costs being recovered from industry?</li> </ul>		
<p><b>Yes</b></p>		<p><b>No</b></p>
<p>Consider whether further relief is necessary through Fee Relief</p>		<p>Fee Relief may be warranted</p>

**2. AUTHORITY**

Policy authority - relevant policy and legislative authorities are required for Fee Relief		
Will Fee Relief impact on government estimates or change a previous policy decision of government (e.g. full cost recovery)?		
<p><b>Yes</b></p>		<p><b>No</b></p>
<p>Need authority from government – prepare NPP – address principles</p>		<p>Entity can make decision to provide relief – address principles</p>
Legislative authority		
Does current legislation for the activity allow Fee Relief, including refund or extension of payment terms?		
<p><b>Yes</b></p>		<p><b>No</b></p>
<p>Entity can provide Fee Relief, including refund or extension of payment terms</p>	<p>Entity to consider whether it is appropriate to amend legislation – seek legal advice</p>	<p>For an extension of payment terms where the charge has already been imposed, entities can utilise the delegation under s63(1)(b) of the PGPA Act</p>



**3. ASSESSING THE FULL FINANCIAL IMPACT OF FEE RELIEF**

<p><b>Entities will need to estimate the financial impact to the Government to support Budget planning.</b></p>
<ul style="list-style-type: none"> <li>• What will be the revenue impact for Government of providing Fee Relief? e.g. a fee deferral may not affect revenue estimates if revenue is still expected to be collected within a financial year.</li> <li>• What are the proposed outcomes of Fee Relief and how will this contribute to economic recovery for the individual, or sector.</li> <li>• Will there be an impact on bad debts?</li> <li>• Has demand for the activity been affected? How will this affect the expenses for the activity? How will Fee Relief impact on expected demand for the activity?</li> <li>• Has a regulatory activity been scaled back to provide regulatory relief to a sector? How will this affect expenses and revenue for the activity?</li> <li>• Does the entity retain the receipts? If so, will budget funding be needed to supplement ongoing activities or an operating loss be applied for?</li> <li>• What period of time will Fee Relief be provided?</li> </ul>

**4. RECOVERY PATHWAY \***

<p><b>Entities are required to develop a plan to return to normal charging arrangements.</b></p>	<p><b>Policy authority and legislative considerations</b></p>
<p>The Pathway should:</p> <ul style="list-style-type: none"> <li>• be consistent with government agreed parameters for Fee Relief</li> <li>• clearly define timing (for instance there should be a clear end date or review date for an indexation pause)</li> <li>• identify how fees will return to their former level, including any evidence to determine the pace of the return to normal charging arrangements</li> <li>• include any transition arrangements, consistent with original decision for Fee Relief and legislative requirements</li> <li>• outline steps in returning to normal charging arrangements, including revised policy authority; legislative amendments; amending forward revenue estimates.</li> </ul>	<p>Where Government has agreed to Fee Relief:</p> <ul style="list-style-type: none"> <li>• Was the decision for Fee Relief for a designated period?</li> <li>• Was it subject to specific conditions (i.e. transitional return to normal charging arrangements)?</li> <li>• Was Fee Relief open ended? If so, is another policy authority required to return to normal charging arrangements?</li> <li>• What legislative arrangements were required to return to normal charging arrangements? Are legislative amendments required to reinstate fees to previous charging levels?</li> </ul>

\*If Fee Relief has already been implemented, entities should contact their relevant AAU to discuss the Fee Relief arrangements and a Recovery Pathway.