



**National Council of  
Women of New Zealand**

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Wahine O Aotearoa

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Submission to the Justice and Electoral Select Committee  
on the Court Fees (Waiver) Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 43 nationally organised societies. It has 34 branches spread throughout the country to which women from some 150 societies are affiliated.

Members of NCWNZ's Standing Committee on Justice & Law Reform have considered the Bill, and in particular the questions posed by the Clerk of the Committee (letter, 15 August 2001), and are pleased to present the following comments.

**Should criteria for waiving, reducing or postponing fees be set out in the legislation?**

The Bill does not even specify that waiving fees is on grounds of financial hardship, let alone any indication of the qualifying level of such hardship. The fundamental criteria (eg. 'financial hardship') should be in the Act, not left to regulation or to judicial discretion.

More specific criteria for determining the qualifying level could potentially be left to regulation or to judicial discretion.

Some express criteria are necessary:

- to assist lawyers and their clients (and also lay litigants) to know whether it is appropriate to apply for a waiver;
- to make the process more transparent.

However, there should also be a residual catch-all clause included to allow for some residual discretion in genuinely exceptional circumstances that fall outside the express criteria

Ideally, preaction waivers should be provided. This would require clear guidelines (to avoid the cost of contested applications for dispensation).

The appropriate income level for full waiver should be higher than the community-card level, and perhaps graduated. (In respect of the court fee increase, several NCW members expressed the view that fees should be graduated according to the amount at stake in the proceeding. This principle could perhaps also be applied to waiver.)

The process will need to be monitored to check whether criteria are being applied reasonably consistently.





**Should there be a review process of a decision in regard to waiving, reducing, or postponing the payment of fees?**

Any such review process should be simple, preferably using an existing agency such as the Legal Services Agency.

If no review process is specified, lawyers and litigants will resort to judicial review anyway. That will constitute a more expensive and less accessible review process.

A specified process will aid transparency.

**Experience of the current use of waiver of fees?**

The Committee has no direct experience. However, one member (a lawyer) had begun exploring the possibilities following the announced increase in High Court fees, after realising that her impecunious (and partly pro bono) clients had no possibility of affording the new court fees. The deferral of the fee increase avoided the need for further research as to a possible waiver at that time.

**Conclusion**

Access to the civil court system enables New Zealanders to resolve disputes or obtain redress from those who have failed in a legal obligation. If the cost of that access excludes people from claiming their rights, the constitutional foundation of our society is undermined just as surely as if the police refuse to assist when someone is attacked.

It is imperative that the courts be able to waive fees when appropriate, according to agreed criteria.

NCWNZ thanks you for the opportunity to comment.

Barbara Glenie  
**National President**

Cheryl Simes  
**Convener,  
Justice & Law Reform Standing Committee**