



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 208

How ASIC charges fees for credit relief applications

July 2020

About this guide

This guide is for applicants for credit relief and their advisers.

It describes our approach to charging fees for credit relief applications, the principles we use to calculate fees and the fees we charge for standard applications.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in July 2020 and is based on legislation and regulations as at the date of issue.

Previous version:

- Superseded Regulatory Guide 208, issued December 2009, reissued June 2010

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the credit legislation and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

The fees that we will charge for a credit relief application depends on the number of substantive matters raised in the application and heads of power involved.

Generally, we will charge a fee for each substantive matter raised and each head of power used.

If we have published a pro forma instrument, we will generally charge one fee for an application for the instrument.

When making a credit relief application, applicants must comply with the requirements set out in [Regulatory Guide 51 Applications for relief](#) (RG 51).

Scope of this guide

- RG 208.1 The examples used in this guide refer to powers commonly exercised by ASIC, such as the powers under s109, 163, s6 of Sch 1 and Div 5, Pt 12 of Sch 1 of the *National Consumer Credit Protection Act 2009* (National Credit Act) and Pt 5 of Sch 2 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act). However, the principles in this guide apply equally to our other discretionary powers.

What principles do we apply in calculating fees?

- RG 208.2 Fees are payable to the Commonwealth for ‘chargeable matters’. An application to us to exercise our discretionary powers under the National Credit Act or the Transitional Act is a ‘chargeable matter’.
- RG 208.3 We may collect the fees on behalf of the Commonwealth.
- RG 208.4 The amount that we will charge for a credit relief application depends on:
- (a) the number of substantive matters raised in the application; and
 - (b) whether the application requires the use of more than one head of power.
- RG 208.5 Generally, we consider that an application will involve as many substantive matters as it involves separate decisions to either exercise or refuse to exercise one of our discretionary powers.

- RG 208.6 We will apply the following principles when calculating fees payable for applications:
- (a) One fee will be charged for each substantive matter raised by an application.
 - (b) However, if an application requires us to exercise two or more heads of power, the prescribed fee must be charged for each head of power.
 - (c) In general, and subject to the principle in (b), additional fees will not be charged for relief that is merely ancillary to a substantive matter.
- RG 208.7 See Section B for more detail about the principles we apply when calculating fees.

Fees for standard applications

- RG 208.8 We may publish pro forma instruments for use in applications.
- RG 208.9 Generally, we will treat a standard pro forma instrument as relating to only one substantive matter. However, in accordance with the principle in paragraph RG 208.6(b), we will charge one fee for each head of power invoked by the pro forma instrument.
- RG 208.10 See Section C for more detail about our approach to standard applications.

How to apply for credit relief

- RG 208.11 See Section D for how to apply for credit relief through the [ASIC Regulatory Portal](#).
- RG 208.12 See also [RG 51](#) for further information about the requirements for applications for relief.

B What principles do we apply in calculating fees?

Key points

We charge fees for all 'chargeable matters' as defined in s4 of the *National Consumer Credit Protection (Fees) Act 2009* (Credit Fees Act). An application to ASIC for an approval, exemption, declaration, consent or statement under certain provisions of this Act is a 'chargeable matter'.

We charge a fee for each substantive matter raised in an application. A substantive matter is a matter requiring us to make a separate decision.

If an application requires us to exercise two or more heads of power, the prescribed fee must be charged for each head of power. If there are multiple substantive decisions to be made under one head of power, a multiple of the prescribed fee will be payable.

Generally, additional fees will not be charged for relief that is merely ancillary to a substantive matter.

When are fees payable?

- RG 208.13 Fees are payable to the Commonwealth for 'chargeable matters', as defined in s4(1) of the Credit Fees Act. A 'chargeable matter' includes the making of an application to ASIC in relation to a matter arising under the National Credit Act or the Transitional Act: see para (g) of the definition of 'chargeable matter' in s4(1) of the Credit Fees Act.
- RG 208.14 We may collect the fees on behalf of the Commonwealth under Pt 5–4 of the National Credit Act.
- RG 208.15 Fees are payable for an application to ASIC for an approval, exemption, declaration, consent or statement under certain provisions of:
- (a) the National Credit Act; and
 - (b) the Transitional Act.
- RG 208.16 Fees are set under legislation. The amount that we will charge for an application depends on the relief that is sought: see RG 208.4. When you apply for relief through the [ASIC Regulatory Portal](#), you will be given an indicative fee and details about payment options: see Section D.
- RG 208.17 For current fee amounts, see Sch 1 to the National Consumer Credit Protection (Fees) Regulations 2010 (Credit Fees Regulations).

- RG 208.18 We may refuse to undertake an act which requires payment of a fee until the fee has been paid: s233 of the National Credit Act.
- RG 208.19 For the purposes of s5 and 6 of the Credit Fees Act, fees have been prescribed for applications made under numerous heads of powers, including, for example, s109, 163, s6 of Sch 1 and Div 5, Pt 12 of Sch 1 of the National Credit Act: see Sch 1 to the Credit Fees Regulations.
- RG 208.20 You are liable for these fees even if we decide to grant relief in a different form from what you have requested. We cannot waive these fees nor provide a refund if the application is withdrawn or refused.

Fee for each substantive matter

- RG 208.21 A fee will be charged for each substantive matter raised in an application: see RG 208.6. A substantive matter is a matter requiring us to make a separate decision. The one substantive matter may also involve one or more ancillary matters, but the defining feature of such groups of relief is that only one substantive decision is made.
- RG 208.22 To determine whether an application requires a separate decision, and is therefore a substantive matter, we consider whether that relief may stand by itself, without the need for additional relief. By contrast, a merely ancillary matter will, by itself, normally require additional relief to have the effect for which it is sought, and it would generally be insufficient or futile to grant the application in the ancillary respect only.

Fee for each head of power

Different powers

- RG 208.23 In general, an application to us to exercise powers under two provisions comprises two chargeable matters. One fee is prescribed for each matter. The applicant must pay, and we must collect, each of those prescribed fees. So, for example, if an applicant seeks relief under both s109 and 163 of the National Credit Act, they must pay the fee referable to each of those sections.

Same power

- RG 208.24 If more than one exemption or declaration (to omit, modify or vary) is sought under the same head of power (e.g. two or more modifications to Ch 2 under s109), one or more fees may be charged, depending on the number of substantive decisions that arise from the application. If there are

multiple substantive decisions to be made, a multiple of the prescribed fee will be payable.

- RG 208.25 If, however, there is only one substantive decision involved, and only one power invoked, then it will not matter how many provisions of the legislation may be affected by the instrument. So, for example, an application to modify several provisions of Ch 2 at the same time using the power in s109 may require us to make only one substantive decision, in which case only one fee will be charged.

Ancillary matters

- RG 208.26 In many cases, an instrument affects more than one provision, although it deals with only one substantive matter. We will charge only one fee if a suite of exemptions or declarations (to omit, modify or vary) is needed to deal with one substantive matter—however, many merely ancillary matters may be involved, subject to the principle in RG 208.6(b).

More than one credit licence

- RG 208.27 If we receive a request to exercise one or more heads of power for more than one Australian credit licence (credit licence), a separate decision is needed for each head of power for each licence, to the extent that the decision is not for ancillary relief. The number of substantive matters raised (and therefore the number of fees charged) equals the number of heads of power to be exercised multiplied by the number of credit licences affected.
- RG 208.28 For example, if a group of credit licensees makes an application for the same relief in respect of each credit licensee (i.e. where the application is made by a law firm for a number of licensees in the same group), the applicable fee would be the number of credit licensees multiplied by the prescribed fee for the exercise of that head of power.

Revocations or variations

- RG 208.29 An instrument that varies or revokes a previous instrument is made under the same power as the original instrument: see s33(3) of the *Acts Interpretation Act 1901*. Therefore, the fee for a fresh application to vary or revoke an existing instrument will be assessed on the same principles as set out in RG 208.21–RG 208.26.
- RG 208.30 When an instrument needs to be amended or revoked to deal effectively with the original application, no fee will be charged. This is because the fresh

instrument is needed to deal with the original matter. An example is when, because of some misunderstanding or error on our part, the original instrument of relief contains some erroneous particular.

RG 208.31 However, if a fresh instrument is needed because the original application was erroneous or deficient, or because the scope of the original application has changed, an additional fee will be charged. This is because a corrected or changed application will raise a new substantive matter.

C Fees for standard applications

Key points

From time-to-time, we have published pro forma instruments for use in applications.

If an application for a pro forma instrument only involves the use of one head of power, we will charge one fee for the application. If it requires the exercise of powers under more than one head of power, we will charge a fee for each head of power.

The procedures we adopt for standard applications often involve pro forma instruments which give exemption from, or a declaration to omit, modify or vary, more than one provision. This section deals with the fees for these instruments.

Pro forma applications

- RG 208.32 We have published policies on matters that commonly require us to use our discretionary powers. From time-to-time, we have also published pro forma instruments for use in applications consistent with these policies: see [RG 51](#).
- RG 208.33 Some pro formas group together different exemptions and declarations. They are grouped this way for the convenience of ASIC and applicants. Some of them are grouped together because one commercial initiative can only be implemented with several exemptions from, or declarations to omit, modify or vary, various provisions.

Fees for pro formas

- RG 208.34 If we have published pro forma instruments, our view is that each pro forma relates to one substantive matter. This is so, even if a particular pro forma modifies or provides an exemption from several different provisions, or relates to the operation of one provision in different fact situations. Therefore, only one fee will be charged for an application for a pro forma instrument if that application only requires us to make an exemption or declaration under one head of power.
- RG 208.35 If a pro forma application requires the exercise of powers under more than one head of power, the prescribed fee will be charged for each head of power affected.

D How to apply for credit relief

Key points

This section sets out how you apply for credit relief, including the information to include in your application and submitting it through the ASIC Regulatory Portal.

- RG 208.36 When applying for credit relief you need to:
- (a) submit your application through the ASIC Regulatory Portal;
 - (b) ensure that your application complies with [RG 51](#);
 - (c) specify and quantify any financial and other benefits and costs (including any loss of consumer protection) of the relief as far as you can;
 - (d) if you cannot quantify the benefits and costs, explain why this is so and how the scale of the effects of the relief can be estimated; and
 - (e) set out all information that may be relevant to your application, including your commercial objectives and how you will address any loss of consumer protection.
- RG 208.37 You will need to pay fees for your application. Fees are set under legislation. The amount that we will charge for an application depends on the relief that you seek: see RG 208.4. An indicative fee will be given before you submit your application through the portal. Details about payment options are also given in the portal. For more information, see [how you apply for relief](#).
- RG 208.38 Applications for individual relief are not needed if an ASIC legislative instrument applies.

Note: ASIC legislative instruments were previously called 'class orders' and this term is used in our guidance published before 2015.

Key terms

Term	Meaning in this document
ancillary matter	A matter that, by itself, will normally require additional relief to have the effect for which it is sought
ASIC	Australian Securities and Investments Commission
Ch 2 (for example)	A chapter of the National Credit Act (in this example numbered 2), unless otherwise specified
Credit Fees Act	<i>National Consumer Credit Protection (Fees) Act 2009</i>
Credit Fees Regulations	National Consumer Credit Protection (Fees) Regulations 2010
credit legislation	Has the meaning given in s5 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
instrument	Either an ASIC legislative instrument or an individual relief instrument
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
RG 51 (for example)	An ASIC regulatory guide (in this example, numbered 51)
s35 (for example)	A section of the National Credit Act (in this example numbered 35), unless otherwise specified
substantive matter	A matter requiring ASIC to make a separate decision
Transitional Act	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i>

Related information

Headnotes

ancillary matters, applications for relief, chargeable matters, fees, substantive matters

Regulatory guides

[RG 51](#) *Applications for relief*

Legislation

Acts Interpretation Act 1901, s33(3)

Credit Fees Act, s4, 5 and

Credit Fees Regulations, Sch 1

National Credit Act, s109, 163, 233, s6 of Sch 1 and Div 5, Pt 12 of Sch 1

Transitional Act, Pt 5 of Sch 2