



Corporate Guidelines for Refunds and Waivers

Revision History

Effective Date	Changes
Previous versions are available in BRIK, upon request	
4 June 2020	Updated to reflect the positions within IP Australia who are authorised to approve the refund of monies associated with general sales items.
17 November 2020	Organisation Realignment: Update of Business Group Name.
21 November 2020	Updated content to reflect the additional flexibility provided to the Registrars of Trade Marks and PBR by the <i>Intellectual Property (Fee Exemptions and Other Measures) Regulations 2020</i>

1. Overview of this document

Purpose of the guidelines

These guidelines are intended to provide a clear statement of the principles adhered to by IP Australia when dealing with overpayments, underpayments, refunds and waivers.

These guidelines are not prescriptive. The final decision on whether or not to refund monies or waive fees remains with delegated individuals in the Business Areas of Patents, Trade Marks, Designs, Plant Breeder's Rights and Customer Operations or, who possess other financial delegations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the Accountable Authority Instructions (AAIs).

This document provides delegates with general principles to guide them in making decisions in accordance with the various IP and Financial legislation and instruments (guidelines, instructions, etc).

Intended audience

This document is intended to be read by IP Australia staff who exercise delegations and make decisions in respect of overpayments, underpayments, refunds and/or waivers.

Customers can request a copy of these guidelines by contacting [IP Australia](#).

Sections of this document

This document discusses:

- The legal and policy background to IP Australia's financial dealings with its customers,
- Principles involved in dealing with overpayment and underpayment of fees,
- Principles involved in dealing with refunds, and
- Principles involved in waiving fees.

Related policies and documents

1. IP Australia's overall position in regard to financial transactions is bound by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
2. IP Australia's *Accountable Authority Instructions* (AAIs) are drawn from this Act. Particularly relevant are:
 - *AAI 4 - Managing Money*
 - *AAI 5 - Managing Debts and Amounts Owing to the Commonwealth*

- *AAI 4.6 – User Charging*
3. The intellectual property acts administered by IP Australia also have provisions relating to refund and waiver of fees:
- *Patents Act 1990*
 - *Trade Marks Act 1995*
 - *Designs Act 2003*
 - *Plant Breeder's Rights Act 1994*
4. IP Australia's business groups have procedural manuals providing more detail, including:
- *Part 2.27, Patent Manual of Practice and Procedure*
 - *Part 4, Trade Marks Office Manual of Practice and Procedure*
 - *Part 3 and Part 11, Designs Examiners' Manual of Practice and Procedure*
 - *Part 19 and Part 26, Customer Operations Group Manual of Procedure*
 - *Part 14, Customer Operations Group Manual of Procedure for Plant Breeder's Rights*

2. IP Australia's Operations

General Principles

Fairness and equity

IP Australia is obliged to apply its various rules and procedures consistently across all its customers.

IP Australia will have a single set of fees or prices applying to all applicants and IP rights holders.

IP Australia will apply the same rules for refunds and waivers to all its customers, regardless of the level of their knowledge, or their ability to bear the costs of the fees.

Ability to explain decision

When a decision is made by IP Australia, it must be supported by evidence and capable of being *clearly* explained and repeated.

For example, where the information before the delegate is unclear, and/or, the action or service requested by the customer has not been completed, then the refund of the requisite fee should

follow. The refund should not occur simply in circumstances where the customer simply changes their mind and there are no other circumstances to consider.

Potentially any decision may be subject to review, or even be appealed. It is very important that decisions taken are clearly based and supportable by the evidence and laws and/or instruments before the delegate.

Recovery of costs

IP Australia operates on a full cost recovery basis, funding its operations from revenue raised through charges for administering the intellectual property (IP) rights system (AAI 4.6).

This does not mean that every activity undertaken by IP Australia must recover its own costs but that overall, the organisation's expenditure must be supported by its income.

Administration charges

Where a fee has been set for the provision of a good or service, IP Australia will not charge an additional administration charge for processing overpayments or refunds.

Error by the office

If IP Australia has made an error, provided ambiguous information, given incorrect advice or failed to provide a notification, in such a way that has made a customer liable for a fee that they would not otherwise have needed to pay, then this money will be refunded or waived as appropriate. The principle is that a customer should not be penalised as a result of our error or misinformation.

3. Delegation to Refund or Waive

a) IP Rights:

Each of the Patents, Trade Marks, Designs and Plant Breeder's Rights legislation have provisions for the Commissioner/Registrar and their delegates to refund or waive monies.

IP Australia maintains a Register for each IP Right that lists the positions which have the delegated authority to approve refunds and waivers.

It is the responsibility of each business area to ensure that the delegations under the relevant Act/s for waivers and refunds are properly allocated and exercised.

b) IP Australia's Finance & People Services Group (FPSG)

The PGPA Act and the AAls give IP Australia's Accountable Authority (the Director General) and his nominated delegates, the authority to:

- 1) approve the non-recovery of a debt where:
 - the non-recovery is authorised by an Act.
 - it is not economical to pursue payment of the money, or
 - where the debt is not legally recoverable.

A decision to write off a debt does not legally extinguish the debt. For example, if the debtor's circumstances change in the future the debt can be reinstated and pursued. The only way to legally extinguish a debt or other amount owing to the Commonwealth is for the Finance Minister to waive the amount owing under section 63 of the PGPA Act.

- 2) refund any monies associated with general sales items (non-statutory items), where IP Australia is unable to provide the good or service for which the customer has paid for. FPSG will be advised of a refund request, in writing, by another business area.

For clarity, only the positions of Chief Financial Officer and Deputy Chief Financial Officer, FPSG, are authorised to approve the refund of monies associated with general sales items (non-statutory items).

4. Facilitating Refunds and Waivers

The Accounting Operations team in FPSG (AccOps) processes all waived/exempted fees and arranges the payment of refunds.

AccOps does not decide whether to refund or waive fees, they enact the decisions communicated to them by other business areas.

This communication needs to detail for AccOps:

- the fee,
- the customer,
- whether it is a refund or a waiver, and
- whether it is in full or in part.

It also needs to inform:

- who has taken the decision, their role (or position title) and
- the reasons in support of their decision.

AccOps coordinates approval from the Chief Financial Officer or Deputy Chief Financial Officer as it relates to the refund of monies associated with general sales items (non-statutory items).

5. Statutory Fees – Underpayments / Overpayments

a) Underpayments

In general, if the amount of money paid for an action is less than the prescribed fee, the action will not be performed until or unless the fee is made good.

Waivers / Exemptions

Definition

When a fee is waived or exempted, it means that the customer does not have to pay all or part of a fee but that the requested action will still be undertaken by IP Australia.

Waiving or exempting whole or part of a fee

In exceptional cases, IP Rights delegates may exempt the payment of the whole or any part of a fee, if they are satisfied on reasonable grounds that the action is justified having regard to all the circumstances. Possible scenarios include:

- Where a change in fee amounts has occurred recently, and the customer has, in good faith, paid the old fee.
- The customer has been given incorrect advice by IP Australia, and has a clear expectation based on that advice that a lesser amount is due.
- Where the customer has, in good faith, attempted to pay the fee but:
 - a. a financial institution has unexpectedly levied a bank charge, or
 - b. there has been a variation in foreign exchange,

that results in the customer's payment to be underpaid. IP Australia may waive in this instance the difference of up to AUD\$20 as it is not economical to pursue.

Special circumstance – Patent Searches

It is a requirement under the Patent Cooperation Treaty Rule 16.3 that when a search request comes in that can be partly or fully serviced by the results from a previous search, then part of the search fee will be refunded and sent back to the customer.

Waivers – Considerations

What may be considered?

When deciding whether to waive a fee in whole or in part, the following should be considered:

- If IP Australia has made an error, given incorrect advice or failed to provide a notification, in such a way as will make the customer liable for a fee that they would not otherwise have needed to pay
- If IP Australia has made an error or given incorrect advice that has given the customer a clear expectation that they need to pay an amount that is less than the prescribed fee
- What outcome will ensure that the party involved is being treated equitably?
- Is the waiver in the public interest?
- If it is an underpaid fee, is it uneconomical to pursue the shortfall?
- Can the principles in this decision be clearly explained and repeated?

What may not be considered?

In deciding whether to waive a fee, the following factors should not influence the decision:

- Ability to bear the cost. A person or organisation may not have a fee waived because they do not have the funds to pay or would find the payment a hardship. If they choose to undertake the transaction, they must pay the accompanying fee.
- The level of knowledge or experience of the person/organisation involved
- Whether the person has received refunds/waivers in other matters. Each case must be considered on its own merits.
- The nature of the person/organisation involved. Whether it is an individual, attorney, multi-national company, charity or government department, is not relevant to the decision.

b) Overpayments

Where the amount of money paid for an action is more than the prescribed fee, the excess money will be recognised as an overpayment.

Automatically generated refunds

In exceptional cases, IP Australia will automatically provide a full refund. Examples are:

- The customer has submitted a request and **payment for something outside of IP Australia's scope of activity** (e.g. if a customer forwards to IP Australia both a form and payment to register a vehicle, they will have both returned to them).
- The customer has submitted a request for an action that is within IP Australia's scope of activity, but the **action is not capable of being performed or legally valid**. (e.g. if a customer lodges an opposition to a newly filed application).
- A fee is **overpaid**.
- A fee has been **paid as a result of an office error**. Where IP Australia has made an error, given incorrect advice or failed to provide a notification, in such a way as will make the customer liable for a fee that they would not otherwise have needed to pay then, if the fee has been paid we will refund it.
- **Double Payments** - In the case of someone paying for the same action twice (e.g. doubling up on a renewal payment), the second payment will be automatically repaid as it is regarded as an overpayment. As a practical note, IP Australia will confirm that a double payment has indeed been received before processing a refund.
- For some fees, IP Australia uses different price structures for **on-line transactions** (filing an entire application through IP Australia's internet site is cheaper than filing a paper version). Where a transaction is undertaken online, but the customer pays the standard fee rather than the online rate, it is considered an overpayment and the money in excess of the online rate will be automatically refunded.

When refunds must be applied for

In other cases, IP Australia will consider providing a refund when the customer lodges a request for the refund, and after the relevant delegate has decided that specific legislative or administrative requirements have been met for a refund.

For example, where the customer has attempted to undertake a transaction online at a time when IP Australia's online services are unavailable because of an action taken by IP Australia, the customer may apply for a refund of the money in excess of the online rate.

However, where the customer has undertaken part of the transaction online and the rest of it using conventional mail or paper, they are not eligible for the online rate and must pay the standard fee.

Refunds and associated actions

When a fee is fully refunded, the action associated with that fee is taken to not have been performed.

An exception to this is where the fee was incurred due to IP Australia having made an error, given incorrect advice or failed to provide a notification, in such a way as has made the customer liable for a fee that they would not otherwise have needed to pay. In these cases, despite that the fee is refunded, the action is still taken to have been performed.

When a partial refund is given, then part of the action has not been performed, and it is considered equitable that part of the tendered fee should be returned.

Plant Breeder's Rights – Withdrawals and Surrenders

A formal request to withdraw an application for a Plant Breeder's Right or surrender a Plant Breeder's Right is taken to include a refund of any unearned fees.

Refunds – Considerations

What may be considered?

When deciding whether to refund a fee in whole or in part, the following should be considered by the delegate:

- Has the action associated with the fee been performed?
- What outcome will ensure that the party involved is being treated equitably?
- Can the principles in this decision be clearly explained and repeated?

What may not be considered?

In deciding whether to refund a fee, the following factors should not influence a delegate's decision:

- Ability to bear the cost. A person or organisation may not have a fee refunded because they would find the payment a hardship. If they choose to undertake the transaction, they must pay the accompanying fee.
- The level of knowledge or experience of the person/organisation involved
- Whether the person has received refunds/waivers in other matters. Each case must be considered on its own merits.
- The nature of the person/organisation involved. Whether it is an individual, attorney, multi-national company, charity or government department, is not relevant to the decision.