



Current at 1 July 2004

Guidelines for Waiver of Court Fees on the basis of financial hardship

Family Law Regulations 11(7)(e), 16(3)(c)
Federal Magistrates Regulation 9

Exemption from payment of Court Fees

Family Law Regulations 11(7)(a) – (d), 16(3)(a) and (b)
Federal Magistrates Regulation 8

You do not have to pay a court fee if:

- you hold a Health Care Card, Health Benefit Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card issued by Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth health concessions, or
- you are receiving Legal Aid, Youth Allowance, Austudy or Abstudy payment, or
- you have received a 'Notice of Exemption' from an approved Community Legal Centre, or
- you are a child under 18 or an inmate of a prison or otherwise legally detained in a public institution.

If any of the above applies to you, you will need to complete an 'Application for EXEMPTION' form.

What if none of the above applies?

You may be eligible for a fee to be **waived** (set aside) if your income, day-to-day living expenses, liabilities and assets are at such a level that payment would cause you financial hardship.

The Courts, in consultation with other agencies, have drawn up a 3 part test (see parts B - E of the application) to assist in assessing whether a fee should be waived. These guidelines set out the 3 parts of the test. Use the tables which follow to help you work out whether you qualify. If you meet all 3 parts of the test a waiver will usually be granted, however if you do not meet all 3 parts of the test you may still be eligible for a waiver (see section "Financial Hardship" and part F of the application).

You will need to complete an 'Application for WAIVER' form.

How long is a waiver valid?

A waiver is valid only for the fee you are applying to have waived. If a further fee is payable you will need to reapply.

PLEASE NOTE

FEE WAIVERS AND EXEMPTIONS ONLY APPLY TO COURT FEES.
THEY DO NOT APPLY TO FEES FOR TRANSCRIPTS, SERVICE FEES AND FEES IMPOSED UNDER THE
AUTHORITY OF THE CHIEF EXECUTIVE OFFICER
EG PHOTOCOPYING CHARGES AND FEES FOR COPIES OF DECREES.

Part 1 – Income

How to apply the Income Test

This income test is calculated on income you receive after tax is deducted (net income).

The table below shows the maximum after-tax income you are able to receive each fortnight. The amounts vary depending on whether you have a dependent spouse or any children under 18 who are dependent on you. You may include the number of children for whom you pay child support.

Number of people who are dependent on you – this may include a dependent spouse and any children under 18 who are dependent on you	Allowable income each fortnight (after tax)
0	\$763
1	\$945
2	\$1127
3	\$1309
4	\$1491
5	\$1673

Part 2 – Assets

How to apply the Assets Test

When considering an application for a fee to be waived the Courts takes into account your liquid assets, that is your cash or convertible shares or bonds. These must be less than 5 times the fee payable. For example, a filing fee of \$606 will not have to be paid if your liquid assets are less than \$3030 ($5 \times \$606 = \3030) and you meet the income and day-to-day living expenses and liabilities tests (see parts 3 and 4 below).

Court	Family Court		Federal Magistrates Court	
	Fee	Maximum liquid assets	Fee	Maximum liquid assets
Application for divorce	\$606	\$3030	\$334	\$1440
Application for nullity	\$606	\$3030	N/A	N/A
Application for declaration of validity	\$606	\$3030	N/A	N/A
Application for final orders	\$181	\$905	\$115	\$575
Response to application for final orders	\$181	\$905	\$115	\$575
Notice of appeal to Full Court including from the Federal Magistrates Court	\$746	\$3730	N/A	N/A
Notice of appeal from court of summary jurisdiction	\$363	\$1815	N/A	N/A
Hearing fee (defended matters)	\$363	\$1815	\$345	\$1725

Part 3 – Day-to-day living expenses and liabilities test

How to apply the Day-to-day living expenses and liabilities test

The Courts may find that you are able to pay the fee without financial hardship if you have surplus income after meeting your reasonable day-to-day living expenses and reasonable fortnightly payments towards your liabilities. As a guide, your reasonable day-to-day living expenses can include such expenses as food, rent or home mortgage payments, credit card debts, other loan or lease repayments, electricity, phone(s), the costs of running a motor car etc.

The Courts will grant your request not to pay the fee if your surplus fortnightly disposable income, after expenses and liabilities are deducted, is below the limits shown in the table below and if you meet Parts 1 and 2.

Calculation:

Surplus fortnightly income = Fortnightly income received after tax MINUS your Fortnightly day-to-day living expenses

Court	Family Court		Federal Magistrates Court	
	Fee	Maximum surplus fortnightly income	Fee	Maximum surplus fortnightly income
Application for divorce	\$606	\$287	\$334	\$287
Application for nullity	\$606	\$287	N/A	N/A
Application for declaration of validity	\$606	\$287	N/A	N/A
Application for final orders	\$181	\$115	\$115	\$115
Response to application for final orders	\$181	\$115	\$115	\$115
Notice of appeal to Full Court including appeal from the Federal Magistrates Court	\$746	\$472	N/A	N/A
Notice of appeal from court of summary jurisdiction	\$363	\$239	N/A	N/A
Hearing fee (defended matters)	\$363	\$239	\$345	\$239

Please note that if you apply for an exemption, the Court may ask you to provide evidence to support your claims in respect to income, assets and/or your living expenses and liabilities.

What If I Don't Meet Any Or All Parts of the Test?

Financial Hardship

If you do not meet any or all parts of the test you may still qualify if there are circumstances which you can show would cause you hardship if you were required to pay a fee. For example, your income may be in excess of the maximum allowed in Part 1 however your day to day living expenses greatly exceed this income or you have numerous liabilities that are not being met (these are only 2 examples). The circumstances would have to be reasonable for a waiver to be granted.

Details of those circumstances should be given in the space provided on the waiver application form. If there is not sufficient space on the form, attach additional pages. If you have any documents that support your application for waiver you should also attach copies of those to the waiver application.

The Registrar or Delegate who will consider your waiver application will be greatly assisted by you providing clear and concise information in support of your application. A failure to include all income, assets, liabilities and day to day expenses and an outline of any circumstances upon which you rely will prevent the Registrar or Delegate taking account of that information in making his/her decision.

Refunds

Filing Fees

Government regulations allow fees to be refunded by the Family Court and the Federal Magistrates Court if you have paid a fee to file an application and an exemption or waiver is later granted for that fee. You may also request a refund if a fee has been paid twice in error.

Hearing Fees

The regulations allow refunds for hearing fees only if you have given written notice (eg by sending a letter) to the Court that the hearing is not to proceed or that the Court will be asked only to formalise the making of final orders on the day scheduled for the hearing (for example, when orders are made by consent).

➤ Family Court

In the Family Court you must give at least 20 working days notice before the hearing date.

For hearings called at short notice (that is when you are given less than 20 working days notice of the hearing) then only 2 working days notice is required if a hearing is not to proceed or will only be held to formalise the making of final orders. You must give notice of the cancellation to the Court in writing.

➤ Federal Magistrates Court

In the Federal Magistrates Court you must give at least 10 working days notice before the hearing date.

For hearings called at short notice (that is when you are given less than 10 working days notice of the hearing) then only 2 working days notice is required if a hearing is not to proceed or will only be held to formalise the making of final orders. You must give notice of the cancellation to the Court in writing.

How to Apply for a Refund

To apply for a refund, you will need to complete a 'Request for Refund' form. These forms are available from all registries.