

# FAMILY COURT OF AUSTRALIA

Contact: Registry (Sydney)  
Address: 97-99 Goulburn Street  
Sydney NSW 2000  
Telephone: 02 9217 7111  
Facsimile: 02 92217 7134  
Website: <http://www.familycourt.gov.au>  
E-mail: [sydney@familycourt.gov.au](mailto:sydney@familycourt.gov.au)

Fee Exemption: Yes. Categories detailed below.

Fee Waiver: Yes. Financial hardship.

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## **Fees of the Family Court of Australia**

Regulation 11 and 16 of the *Family Law Regulations 1984* set out the fees payable in the Family Court of Australia including filing and appeal fees. Fee exemption and waiver does not apply to fees in respect of obtaining copies of orders or photocopying.

## **Fee Exemption**

The circumstances in which a person is exempt from paying a fee is set out in clauses 11(7) and 16(3) of the *Family Law Regulations 1984*.

In general, exemption applies if the person:

- is the holder of 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 the holder to a Commonwealth health concession, or
- is receiving Legal Aid, Youth Allowance, Austudy or Abstudy payment, or
- is a child under 18 or an inmate of a prison or otherwise legally detained in a public institution.

## **Fee Waiver/Postponement**

Under regulation 11(7)(e) of the *Family Law Regulation 1984*, a fee may be waived if the income, day-to-day living expenses, liabilities and assets of a person are at such a level that payment would cause financial hardship.

## **Procedure**

If the person is within the categories established in regulation 8 of the *Family Law Regulation 1984*, the relevant sections of an Application for Exemption form, must be completed. The form is attached (1 page). The form can be found online at

[http://www.familycourt.gov.au/presence/connect/www/home/forms\\_fees/fees/fees\\_waiver/commands/forms/cmd/Application Exemption form court fees](http://www.familycourt.gov.au/presence/connect/www/home/forms_fees/fees/fees_waiver/commands/forms/cmd/Application%20Exemption%20form%20court%20fees)

If a waiver of fees, on the basis of financial hardship is sought, an Application for Waiver form is used. The form is attached (3 pages) and can be found online at

[http://www.familycourt.gov.au/presence/connect/www/home/forms\\_fees/fees/fees\\_waiver/commands/forms/cmd/waiver financial hardship](http://www.familycourt.gov.au/presence/connect/www/home/forms_fees/fees/fees_waiver/commands/forms/cmd/waiver_financial_hardship)

The Family Court, in consultation with other agencies, has drawn up a three part test to assist in assessing whether a fee should be waived on the basis of financial hardship. These guidelines set out the three parts of the test. If all three parts of the test are met, a waiver will usually be granted, however other circumstances may also meet the eligibility criteria. Read the attached guidelines from the Family Court's website (3 pages). The guidelines can be found online at

[http://www.familycourt.gov.au/presence/connect/www/home/forms\\_fees/fees/fees\\_waiver/commands/forms/cmd/guidelines waiver financial hardship](http://www.familycourt.gov.au/presence/connect/www/home/forms_fees/fees/fees_waiver/commands/forms/cmd/guidelines_waiver_financial_hardship)

Documentary evidence will be required to support the application. The form must be forwarded to the Registrar for decision.

## **Review**

Under regulation 16A of the *Family Law Regulation 1984*, an application may be made to the Administrative Appeals Tribunal for review of the decision not to waive a fee.

To update this manual:

Visit the 'Forms and Fees' on the Family Court of Australia website. Select 'Fees', fee waiver information is at the end of the page.

[http://www.familycourt.gov.au/presence/connect/www/home/forms\\_fees/fees/](http://www.familycourt.gov.au/presence/connect/www/home/forms_fees/fees/)



# Application - Exemption form Payment of court fees

Family Law Regulation 11(7)(c)(d)  
Federal Magistrates Regulation 2000, Regulation 8

Give details	
File Number	
File name	
Date filed	

**Cross boxes where applicable**

## Notice to applicant

Use this form 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 or Austudy payment or Abstudy, or
- you have received a 'Notice of Exemption' from an approved Community Legal Centre
- you are a child under 18, or
- you are an inmate of a prison or otherwise legally detained in a public institution

**When returning your completed application form to the registry you will need to attach photocopies of documentary evidence of any of the above (such as your Health Care Card or Legal Aid letter) to support your claim. Photocopy both sides of the card or other document.**

If you do not qualify for any of the above, you may be able to apply for a fee to be waived on the basis of financial hardship. Ask registry staff for the appropriate form and guidelines.

An exemption is valid only for the fee for which you seek an exemption. If a further fee is payable you will need to reapply.

## Details

1 Name and address	family name (surname)	given names	
	<table border="1"> <tr> <td>postcode</td> <td>telephone</td> </tr> </table>		postcode
postcode	telephone		
2 Fee for which exemption is sought	<b>Family Court:</b>		
	Form: Application <input type="checkbox"/>	Response <input type="checkbox"/> Hearing fee <input type="checkbox"/>	
	<b>Federal Magistrates Court:</b>		
3 Reason for seeking exemption	Form: Application <input type="checkbox"/> Response <input type="checkbox"/> Hearing fee <input type="checkbox"/>		
	(including divorce)		
	<b>Appeal:</b> to Full Court <input type="checkbox"/> from court of summary jurisdiction <input type="checkbox"/>		
I currently receive the following means-tested pension or other benefit:			
Health Care Card <input type="checkbox"/>			
Health Benefit Card <input type="checkbox"/>			
Pensioner Concession Card <input type="checkbox"/>			
Commonwealth Seniors Health Card <input type="checkbox"/>			
Any other card issued by the Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions <input type="checkbox"/>			
Youth allowance or Austudy payment <input type="checkbox"/>			
Abstudy benefits <input type="checkbox"/>			
<b>Or</b>			
I am in receipt of Legal Aid <input type="checkbox"/>			
I have received a 'Notice of Exemption' from an approved Community Legal Centre <input type="checkbox"/>			
I am a child under 18 years <input type="checkbox"/>			
I am an inmate of a prison or otherwise lawfully detained in a public institution <input type="checkbox"/>			

## Signature

\_\_\_\_\_

person in 1  or lawyer who prepared this application for person in 1  *print lawyer's name:*

name of lawyer who prepared this application for person in 1 \_\_\_\_\_

## Court use only

Copy of relevant documents attached  Exemption granted  Exemption refused  Exempt  Legal Aid

Signature of officer ..... Date ...../...../.....



Current at 29 March 2004

# Application for Waiver of Court Fees on the basis of financial hardship

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

Give details	
File number	
File name	
Date Filed	

## Notice to applicant

For approval for a fee to be waived (set aside) you will need to show that your income, day-to-day living expenses, liabilities and assets are at such a level that payment of the fee would cause you financial hardship.

In considering your application the Court may ask you to provide documentary evidence to support your claim. In this case your application will be returned to you with instructions in the 'Notice of request for more information' on page 2.

If you are applying for a filing fee to be waived, then this form must be lodged at the same time as the application being filed.

If you are applying for a hearing fee to be waived, then this form must be lodged once the hearing date is set. Your hearing date will be set at a Pre-Trial Conference (Family Court) or at a First Court Date (Federal Magistrate Court). During this conference or hearing you will be told the time limit within which the non-payment application must be lodged.

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.

- **Cross boxes where applicable. Type or print clearly.**
- **Attach an extra page if you need more space for any of the details requested**

*NOTE: Waivers and exemptions only apply to court fees and **do not** apply to fees to serve documents on a person*

## A Details

### 1 Name and address

family name (surname)

given names

post code

telephone

### 2 Fee for which waiver is sought

#### Family Court

Form: Application  Response  Hearing fee

#### Federal Magistrates Court

Form: Application  Response  Hearing fee   
(including divorce)

**Appeal:** to Full Court  from court of summary jurisdiction

### 3 Number of people who are dependent on you (this may include a dependent spouse and any children under 18)

number







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 Appointment/application/hearing	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.