



Administrative  
Appeals Tribunal

Migration and Refugee Division

# Guidelines on reduction of review application fees

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## Introduction

1. The Migration Act, at subparagraph [347\(1\)\(c\)](#), provides that an application for review of a migration decision must be accompanied by the prescribed fee (if any).
2. Regulation 4.13(4) of the Migration Regulations provides that the Registrar may determine that only 50% of the application fee should be paid if he or she is satisfied that payment of the fee has caused, or is likely to cause, severe financial hardship to the review applicant. The Registrar has delegated this power to certain officers.
3. If a fee is payable in relation to an application for review, and the applicant wishes to request a fee reduction, the applicant must either pay the full fee or pay 50% of the fee, and lodge a fee reduction request prior to the end of the prescribed period (time limit) within which the application for review must be made. If this fee is not paid by the end of the prescribed period, then s.347(1)(c) of the Act is not satisfied and we will consider whether there is jurisdiction to review the case.

## Fee reduction requests

4. A fee reduction request should be made on Form *MR11 Request for fee reduction – MR Division* which is available from our website.
5. A fee reduction request cannot be made after the end of the prescribed period (time limit) within which an application for review must be made unless the applicant paid the full fee and is therefore seeking a refund of the fee. A fee reduction request cannot be accepted after a decision has been made on the application for review.
6. All fee reduction requests should be resolved as quickly as possible. The time standard is that 70% of fee reduction requests will be determined within 10 working days of the request.

## Assessment of fee reduction requests

7. The primary focus when assessing a fee reduction request is the review applicant's financial circumstances and his or her capacity to pay the fee. An assessment of whether payment of the fee has caused, or is likely to cause, severe financial hardship to a review applicant is ordinarily based on the information provided on, and with, form MR11. However, regard may be had to other information in our possession.
8. Applicants should provide all supporting documentation at the time they lodge their fee reduction application. However, if an applicant contacts us and provides satisfactory reasons as to why they are unable to provide the supporting documentation at the time of the application, the Registrar or delegate may grant an extension of up to 5 working days for the applicant to provide the documents.
9. In assessing a fee reduction request, regard should be had to:

- the capacity of the applicant to pay the full fee
  - whether payment of the full fee would mean that the applicant is not able to meet essential living expenses at the time of, or in the weeks subsequent to, the lodgement of the application for review.
10. Other relevant financial considerations may include:
- the composition of the applicant's family unit including dependants
  - all sources of income, including salaries, wages, Centrelink payments and workers compensation
  - the parent or guardian's financial position if the review applicant is under 18 and is under the daily care and control of the parent or guardian
  - expenses and savings, including those shared with one or more other persons
  - if multiple review applicants have combined their applications and one fee is payable, whether any one or all are in a position to pay the fee without suffering severe financial hardship.
11. Evidence that another agency or organisation has, in respect of the applicant, waived, reduced or not imposed a fee for financial reasons (such as legal aid or pro-bono migration assistance) may be relevant.
12. While the criteria for grant of a student visa or visitor visa does not include capacity to pay a review fee, persons seeking the grant of a student visa or visitor visa are expected to meet costs associated with travel and stay in Australia if a visa were to be granted, and it is not anticipated that such persons would ordinarily be in circumstances in which payment of the full fee would cause severe financial hardship. Generally speaking, businesses or employers who are currently or intending to employ visa applicants or holders would not ordinarily be in circumstances in which payment of the full fee would cause severe financial hardship.
13. Circumstances in which it is anticipated a fee reduction may ordinarily be granted include where the review applicant:
- is, or has recently been, in immigration or criminal detention for more than 10 days
  - has a post-tax income that is no more than the maximum Newstart Allowance (single and partner rates available from the Centrelink/DHS website).
14. If a request for a fee reduction is made a significant period of time after an application for review has been lodged, the Registrar or delegate must consider

whether the payment caused severe financial hardship to the review applicant at the time the application for review was lodged, not at the time of the request.

15. If the Registrar or delegate is not satisfied that payment of the full fee has caused, or is likely to cause, severe financial hardship to the review applicant, the Registrar or delegate may (subject to the following paragraphs) refuse the request without seeking further information or comment from the applicant.
16. It is not anticipated that the Registrar or delegate would ordinarily need to seek comments or further information from a review applicant before making a decision. However, if the Registrar or delegate is considering relying on information other than that provided on and with the fee reduction request, or if additional information is necessary, the officer should ask the review applicant for comments or the information. The officer should ensure that an opportunity is given to an applicant to comment on any information, of which the applicant is unlikely to already be aware, that may be relied upon in deciding not to grant a fee reduction. An officer can contact a review applicant by e-mail, phone, fax or post. Generally speaking, 7 calendar days after receipt of notification would be a reasonable period for providing comments or a response.
17. The review applicant should be informed that if the requested information is not provided to the Registrar or delegate the fee reduction request may be decided on the basis of the information currently available without further contact from the Registrar or delegate and that this may result in the refusal of the request for a fee reduction.

## **Resolution of fee reduction requests**

18. The consideration of a fee reduction request may be deferred if we are otherwise considering making a decision that it has no jurisdiction to deal with the application for review, for example, where the decision is not reviewable by us or the review application has been lodged out of time. If a decision is made that we have no jurisdiction on a ground other than payment of the fee, the fee reduction request does not need to be considered further.
19. A review applicant may withdraw a fee reduction request at any time. The withdrawal of the request should be noted in CaseMate and relevant steps taken to progress the matter. It may be appropriate for officers to contact the review applicant to advise the ramifications of withdrawing the fee reduction request, for example the need to pay the balance of the applicable fee if only 50% of the fee was paid within the prescribed period to lodge the review application.
20. If a determination is made that the fee should be reduced and the full fee has already been paid, the excess part of the paid fee is to be refunded.

## **Advice of fee reduction decision**

21. The review applicant is to be advised in writing of a fee reduction decision. Where a fee reduction request is refused, the letter should briefly set out reasons.
22. Where the applicant has already paid 50% of the application fee, and a fee reduction request is refused the letter notifying the review applicant of the decision should inform the review applicant that the remaining 50% of the fee must be paid prior to the end of the prescribed period or within a reasonable period after the fee reduction request is refused, whichever is longer.
23. A reasonable period in which to pay the remaining amount of the fee (where applicable) would ordinarily be 14 calendar days after the date the review applicant is notified of the decision. The Registrar or delegates should calculate the due date and include this in the letter. In extenuating circumstances the Authorise Officer may consider an extension of the time period for the payment to be made. This period should not exceed 7 calendar days. The remaining amount of the fee must be paid in full and not in instalments.
24. The notification letter must inform the review applicant of the consequences if the remaining amount of the fee is not paid within the time allowed; that is, that the tribunal will consider whether there is jurisdiction to review the application.
25. In cases where the review applicant does not pay the remaining fee by the specified due date, we will consider whether there is jurisdiction to review the case.

## **No review of fee reduction decisions**

26. A review applicant cannot apply to us for a review of a fee reduction decision. However there may be rare circumstances where a decision is affected by an error in the decision-making process. For example, where the Registrar or delegate making the initial determination failed to take into account relevant material that was with us. A reconsideration should be made by a District Registrar. If this occurs it must be reported in the monthly registry report.

## **Monitoring and review of guideline**

27. Each month District Registrars must review the CaseMate report on fee reductions (and fee refunds) processed in their registry. District Registrars should advise the Director, Finance in writing of (a) any decisions made by officers who are not the Registrar or delegates and (b) any apparent pattern of activity which warrants further examination.
28. Within 6 weeks of the end of a financial year, District Registrars will provide the Registrar with a report on a sample of not less than 10% of fee reduction decisions made in their registry during the year. The report will comment and provide

recommendations as appropriate relating to the quality and timeliness of fee reduction determinations.