Waiver of Debt

What is the waiver of debt power?
A waiver is a special concession granted to a person or organisation that extinguishes a debt owed to the Commonwealth. This means that the debt is completely forgiven and can no longer be recovered. The waiver of debt power is available to provide a remedy for all Financial Management and Accountability Act 1997 (FMA) agencies.

The waiver of debt power is discretionary. This means there is no situation which creates an automatic entitlement to a waiver of debt.

Who has the authority to waive a debt?
The waiver of debt power is found in section 34(1)(a) of the FMA Act. It allows the Finance Minister to waive amounts owing to the Commonwealth. The waiver of debt power has been delegated to officials within the Department of Finance (Finance).

When are debts waived?
Debts are usually waived where the decision maker considers recovery of the debt would be inequitable or cause ongoing financial hardship and that other debt treatment options (such as an agency writing off the debt or deferring payment) are not appropriate.

The waiver of debt mechanism is generally an avenue of last resort and is used only where there is no other viable avenue to provide redress.

What is financial hardship?
Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.

However, even if you demonstrate financial hardship, the decision maker may still consider your debt should not be waived.

Who can apply for a waiver of debt?
Any individual, company or other organisation can apply for waiver of a debt owed to the Commonwealth, either for themselves or for an authorised third party.

How do I apply?
Claims are made in writing. Face-to-face meetings are generally not conducted. You can apply for a waiver of debt by completing the application form. Please include all relevant evidence in support of your application e.g. correspondence between yourself and the relevant Government agency, medical certificates etc. If you are applying for a waiver of debt on the grounds of financial hardship, please complete the additional Statement of Financial Details.

Application forms are available on the Finance website. Once completed, they can be sent to:

Discretionary Payments Section
Risk, Insurance and Special Claims Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES ACT 2600
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When will a decision be made?
Generally, Finance will seek information about your application from relevant Government agencies. A copy of the agency’s advice will be provided to you for an opportunity to comment, prior to a decision being made.

Once all relevant information is available, the request will be submitted for a decision as soon as practicable.

The decision maker will provide you with an explanation of his or her decision in writing.

What happens if my application is successful?
Once the decision has been made to waive a debt, Finance will ask the relevant agency to which the debt relates to amend their records and remove the debt.

What options do I have if my application is unsuccessful?
Generally, a request will not be reconsidered unless you can show that the decision maker made a serious factual mistake or if you provide relevant new evidence.

A Complaint to the Commonwealth Ombudsman
If you are dissatisfied with the way Finance handled your request for a waiver of debt, you can ask the Commonwealth Ombudsman to investigate. Investigations are independent, informal, private and free. The Ombudsman cannot investigate actions or decisions by a Minister.

If the Ombudsman decides to investigate your case, you and Finance will receive a report of findings from the investigation. The Ombudsman may make a recommendation to the Department for the matter to be considered again, but cannot change the decision.

You can contact the Commonwealth Ombudsman on the following details:

Phone: 1300 362 072
Postal: Commonwealth Ombudsman
        GPO Box 442
        CANBERRA ACT 2601
Website: www.ombudsman.gov.au

Review under the Administrative Decisions (Judicial Review) Act 1977

Decisions about waivers of debt can be reviewed by the Federal Circuit Court and the Federal Court under the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act). The grounds for review include a breach of the rules of natural justice or an error of law. You are also able to request a statement of reasons for the decision, within 28 days, under the ADJR Act. The statement will restate the reasons that you have already been given, formally setting out the facts, evidence used, and reasons for the decision.

The Court can set aside the decision and refer the case back to Finance for further consideration, but cannot review the merits of the decision, or substitute a decision to waive a debt. Regardless of any view expressed by the Court, a decision maker may again decide not to approve waiver of the debt.
The ADJR Act prescribes various time limits and fees, and you may also face an award of costs if an application for judicial review is unsuccessful. You can find out more about your options under the ADJR Act and judicial review at www.fedcourt.gov.au.

It is recommended that you seek independent legal advice if considering judicial review.

**Contacting the Discretionary Payments Section**

For further information, you can contact the Discretionary Payments Section from Monday to Friday 9am – 5pm (AEST).

Phone: 1800 227 572 (calls from mobile phones at mobile phone rates)

Email: sfc@finance.gov.au.

Postal: Discretionary Payments Section
Risk, Insurance and Special Claims Branch
Department of Finance
King Edward Terrace
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