



Dealing with debt

Your rights and responsibilities



MONEYSMART
Simple guidance you can trust



Australian
Competition &
Consumer
Commission



ASIC

Australian Securities & Investments Commission

About ASIC

The Australian Securities and Investments Commission (ASIC) regulates financial advice and financial products (including credit).

Our website for consumers and investors, MoneySmart, offers you free and independent tips and safety checks about the financial products and services we regulate.

Visit www.moneysmart.gov.au or call ASIC's Infoline on 1300 300 630.

About the ACCC

The Australian Competition and Consumer Commission (ACCC) is the general consumer protection regulator and is responsible for regulation of goods and services generally.

For further information visit the ACCC's website on www.accc.gov.au or call the ACCC's Infocentre on 1300 302 502.

About this booklet

This booklet is for you, if you:

- ▶ owe a debt and want more information about your rights and responsibilities
- ▶ are having trouble paying your debts
- ▶ have been approached by a debt collector
- ▶ have been threatened with legal action
- ▶ dispute a debt, or the amount of your debt
- ▶ think there is a legal reason that allows you to refuse to pay a debt
- ▶ have a partner, relative or friend who is in debt
- ▶ believe you might be responsible for someone else's debt (e.g. you are a guarantor or co-borrower).



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Key tips about debt

- ▶ Manage your finances and plan your budget, so that debts don't build up and take you by surprise.
- ▶ A free and independent financial counselling service may be able to help you if you are having trouble paying your debts or managing your budget.
- ▶ If you cannot meet your financial commitments, contact the creditor (the business or person you owe money to) without delay to discuss a repayment plan.
- ▶ When negotiating a repayment plan, be realistic about what you can pay – taking into account your other financial commitments. Be honest with the creditor or debt collector about your situation.
- ▶ Keep copies of any letters you send or receive (and notes of any conversations you have).
- ▶ Make sure you actually owe the debt. Ask for proof (e.g. documents, account statements) if you think a debt is not yours or if you disagree with the amount demanded. Get independent advice if you are still not sure whether you have to pay some or all of a debt.
- ▶ If you are contacted about a debt that is several years old, do not confirm the debt or make a payment until you get independent advice.
- ▶ If you are threatened with legal action, get advice about your options as soon as possible.
- ▶ If you are contacted about a debt, be cooperative, and expect to be treated professionally. Make a formal complaint if a creditor or debt collector misleads you, threatens you or is abusive.



Are you in debt?

If you have borrowed money, bought something with finance, have a loan or a credit card debt or owe money for bills or accounts, you have a legal responsibility to repay the money you owe.

You must not try to avoid your responsibility to repay your debts.



Quick tip

You should get advice immediately if you have been contacted about a debt and you think:

- ▶ you don't owe the debt
- ▶ you only owe part of the debt
- ▶ you have a legal defence against the debt.

See 'Disputing a debt' on page 13, for more details.

Are you responsible for someone else's debt?

You are generally not legally responsible for paying another person's debts – even if that person is your spouse, partner or child. If someone you know has a debt problem, encourage them to see a financial counsellor (or, if appropriate, a gambling counsellor) without delay.

Sometimes people do make themselves legally responsible for other people's debts by agreeing to be a co-borrower or guarantor for a loan. Think very carefully before you agree to be a co-borrower or guarantor – even though you might not benefit from the loan yourself, you could end up being liable (i.e. legally responsible) for the entire amount owing if the person who took out the loan defaults on their repayments.

You should get advice if:

- ▶ you agreed to be a co-borrower or guarantor under pressure or through fear
- ▶ you did not understand the nature or extent of the commitment you were making.

Dealing with your debts

People get into financial difficulties for many reasons, including unemployment, relationship breakdown, illness or excessive use of credit. If you are struggling to keep up with your debt repayments, don't try to ignore the problem, or hope it will go away – take control of the situation.

Take some time to think about your income, expenses, assets and liabilities, and work out a budget so that you can meet your financial commitments when they are due. A free and independent financial counselling service may be able to help you with this process.

Find out more



Financial counselling services help people who are in financial difficulty. They are available in every state and territory and provide a free, independent and confidential service. See page 27 for more details.

Some businesses also provide a service to help people struggling with debt – for a fee. Make sure you know what service you are getting from these businesses, how much it is going to cost you and whether you can get the same service for free from a financial counsellor.

If you cannot keep up your debt repayments, you should contact your creditor (the person or business you owe money to) as soon as possible to discuss your situation. Try to agree on a repayment plan that you can manage.

If you ignore debt problems, they are only likely to get worse. Interest will probably continue to be charged on top of the debt and if the debt is secured against any of your assets (e.g. your car), these assets may be repossessed and sold. Also, your credit rating is likely to be affected and you might be sued.

Even if you think you cannot pay or you feel the situation is hopeless, you need to act. You do have options – contact a free and independent financial counselling service to discuss them.



Dealing with debt collectors

A 'debt collector' is a person who collects debts in the course of a business. This could be:

- ▶ a creditor collecting a debt themselves (this includes 'assignees' – people or businesses who have been sold or 'assigned' a debt by the original creditor)
- ▶ someone acting on behalf of the creditor (e.g. an independent collection agency).

If a debt collector contacts you, be cooperative. In turn, you should expect to be treated in a professional manner. Excessive or unreasonable contact by a debt collector may be unlawful. See 'Unacceptable behaviour by debt collectors' on page 21.



When, where and why can you be contacted about a debt?

A debt collector should only contact you when it is necessary to do so and when the contact is made for a reasonable purpose.

A reasonable purpose includes:

- ▶ making a demand for payment
- ▶ making arrangements for repayment
- ▶ finding out why an agreed repayment plan has not been met
- ▶ reviewing a repayment plan after an agreed period of time
- ▶ inspecting or recovering mortgaged goods (if they have a right to do so).

As a guide, if contact is necessary, it should be limited (unless you request or agree otherwise) to:

- ▶ a maximum of 3 phone calls or letters per week (or 10 per month)
- ▶ phone contact only between the hours of 7:30 am–9:00 pm on weekdays and 9:00 am–9:00 pm on weekends
- ▶ face-to-face contact only between the hours of 9:00 am–9:00 pm on weekdays and weekends
- ▶ no contact on national public holidays.

Generally, visits to your home (or another agreed location) should only occur if there is no other way the debt collector can make effective contact with you, or if you ask for (or agree to) a visit. If repayment arrangements can be worked out over the phone or by letter, then face-to-face contact should not be necessary.



As a guide, any personal visits should be limited to once per fortnight and take place between 9:00 am and 9:00 pm (unless you ask for a different time). A debt collector should not visit you at your workplace unless you request them to, or if you haven't given them any other effective way to contact you. If a debt collector does contact you at work, they must not reveal information about your financial situation to others.



Negotiating a repayment plan

Creditors will often agree to an extended period for repayment (or smaller periodic repayments over a longer time) when people get into difficulties. Sometimes they will be willing to settle (finalise) the whole debt on the basis of a lump sum payment of part of the debt. You may be able to negotiate such arrangements through the debt collector.

If you are negotiating a repayment plan, offer what you can afford to pay but be realistic about your living costs and your other debts. Also be open and honest with the creditor or debt collector about your other financial commitments.



Quick tip

In the case of consumer credit such as home loans, personal loans, credit cards, car loans and consumer loans, you may have a right to seek a 'hardship variation'. This is a formal process where you ask your credit provider to 'vary' the terms of your loan contract. See pages 10–11 for an example of how to request a hardship variation.

For more information, download the *Can't pay your debts?* factsheet from www.moneysmart.gov.au or talk to a free and independent financial counselling service or a community legal service. See pages 27–29.



Sample letter

Below is an example of a letter requesting a hardship variation that might help you write your own letter. A request for a hardship variation does not need to be made in writing. You may prefer to apply over the phone.

(Date)

(Name of lender or creditor)

(Name of department the letter should go to, e.g. 'Customer service department')

(Address of lender or creditor)

Dear Manager,

Request for change to repayments on the grounds of hardship

Account name:

Account no:

I/We currently have a loan/ account with (name of creditor) _____.
The account number is _____ and we pay \$ _____
each (week/fortnight/month) _____.

I/We wish to apply to you for a variation of the above contract
under section 72 of the National Consumer Credit Code.

I/We request that:

1. each repayment be reduced to (\$ per week/fortnight/month) _____.
This change is requested from (Date) _____
until (Date) _____.
2. the repayment due on (Date) _____ be postponed so that it is
now due on (Date) _____, with the next repayments being due
on the following dates: (Date) _____.
3. the repayments due between (Date) _____ and (Date) _____
be postponed until (Date) _____.

Phone the lender or creditor and ask which specific department to send your request for hardship variation to.

Choose one option only



I/We understand that where I am/we are requesting the payments be reduced or postponed, there will be no change in the annual percentage rate and the term of the loan/account will be extended accordingly.

I am/we are unable to meet my/our current payment obligations because:

Provide details of illness, unemployment or other reasons for your hardship and expected date for recovery/employment/change in your circumstances.

In support of my/our application I/we give the following details:

Details of income and expenditure:

- ▶ My/our current income is (\$ per week/fortnight/month) _____.
- ▶ My/our current expenses are (\$ per week/fortnight/month) _____.
- ▶ Rent/mortgage (\$ per week/fortnight/month) _____.
- ▶ Other loan repayments (\$ per week/fortnight/month) _____.
- ▶ Other major expenses (\$ per week/fortnight/month) _____.

I/We expect that I/we will be able to meet the obligations of our loan/account if you agree to this proposed change.

I/We understand that you will give me/us a written reply within 21 days of receipt of this application, stating whether or not this variation has been agreed to, and provide me/us with the name of your external dispute resolution scheme and my/our rights under that scheme if this application is refused.

I/We assume you will stay all enforcement action while you consider this application. If this is not possible, please let me/us know immediately in writing.

I/We await your reply in writing.

Yours sincerely,

(Full name)

Don't give up if a creditor or debt collector tells you they will not accept a repayment plan. Put your situation in writing and tell them how much you can afford to pay, and how often. Meanwhile, you should keep making payments at the level you can afford. **Don't be pushed to make promises you won't be able to keep.**

If you reach an agreement with the debt collector:

- ▶ write a letter to the debt collector confirming the agreement
- ▶ ask for it to be confirmed in writing
- ▶ keep a copy of the letters.

Then make every effort to keep to the agreement.

Record keeping

It is important to keep good personal records. Remember the following tips:

- Keep receipts or other records of payment and copies of any letters you send or receive (when writing letters, remember to include the date).
- If you are asked to provide documents, make sure you keep a copy for yourself (if possible, keep the original and send the copy).
- Keep a note of telephone conversations or meetings. Write down the time, date and whom you spoke to (their name, their company or business and their job title).
- If you make an agreement over the phone or in person, ask for it to be confirmed in writing (and also confirm it in writing yourself).
- Keep all your records together to avoid losing any important information.



Disputing a debt

If you are contacted about a debt you do not owe (or if you disagree with the amount of the debt being claimed), you have a right to dispute the debt or the amount of the debt.

When you make a reasonable request, debt collectors should be prepared to give you account information and copies of contracts (if the debt collector is acting on behalf of a creditor, they may refer your request to the creditor). For home loans (except for investment properties), personal loans and credit card debts, you have a specific right to this information by law.

If you are disputing a debt, a debt collector should stop collection activity until any reasonable request for information has been met, and the debt has been confirmed. Also, a default listing on your credit report should not be made during this period.

'That is not my debt!'

In cases of mistaken identity, showing your driver's licence or other ID may resolve the situation. However, the decision to show ID is yours – you cannot be forced to do so by a debt collector.

Identity fraud is when a person or group uses your personal details for their own financial gain (e.g. to run up a debt in your name). If you think this has happened, contact the creditor or your financial institution immediately.

You can also get a copy of your credit report (for free) to make sure no fraudulent transactions have been made in your name. See page 28 for more details or download the *Your credit report* factsheet from www.moneysmart.gov.au.

'I thought that debt had been settled!'

Sometimes a debt collector might contact you about a debt even though you have paid it in full, or it has already been settled in some other way.

If this is the case, explain the situation to the debt collector in writing and include copies of any records or information you have that prove the debt has been settled. This is why it is always important to keep your own records of your debts, even when they have been paid.

If the debt has already been settled, you should also ask the debt collector why they are contacting you. If the collection activity continues without an adequate explanation, make a complaint. See 'To find out more', pages 27–33.

'I don't think I owe that much!'

You might accept that you owe the debt but disagree with (or are unsure about) the amount claimed. If this is the case, ask for an itemised statement of your account that clearly sets out:

- ▶ the amount and date of the alleged debt
- ▶ how it is calculated
- ▶ details of all payments made and all amounts owing (including principal, interest, fees and charges).

Quick tip



Check the statement carefully. It might include recovery fees or expenses charged by the debt collector.

Check whether you have to pay these and get advice if you think the fees are unfair. For example, did your original contract say anything about these fees or expenses?



Dispute resolution schemes

You may be able to resolve an ongoing dispute with a debt collector using an independent body (e.g. a fair trading tribunal or independent dispute resolution scheme).

There are independent dispute resolution schemes for the banking, telecommunications and utilities industries. These schemes are available to consumers free of charge, and scheme members must comply with their decisions. See pages 30–31 for their contact details.



Quick tip

Make sure you refer an unresolved dispute to a scheme or tribunal **without delay**. Generally, legal proceedings cannot be started against you while a matter is being considered by one of these bodies.

If legal proceedings have started but judgment has not been entered, and you have not taken any action beyond lodging a defence (or lodging a defence and counterclaim), you can still take your dispute to an external dispute resolution scheme. See pages 30–31 for contact details.

Are you being taken to court?

Creditors have the right to start legal proceedings to recover money – in other words, they can sue you for a debt. If they do, these legal proceedings will be civil rather than criminal, and will have nothing to do with the police or the possibility of jail.

If you receive notice that you are being taken to court (such as a **summons**, **statement of claim** or **liquidated claim**) you should act without delay. The action you decide to take will depend on whether or not you dispute the debt.

If you are sure that you owe the amount claimed and if you cannot pay the full amount, think about applying, within any timeframe allowed, to pay by instalments. You can arrange this with the court staff or with an external dispute resolution scheme. See pages 30–31 for their contact details.

You could also request a postponement of enforcement from your lender or creditor to stop the repossession or sale of your goods.



Sample letter

Opposite is an example of a postponement of enforcement letter that might help you write your own letter.

If your creditor refuses your request for postponement, it must respond to you in writing and give you the name of its external dispute resolution scheme. You can also request a postponement of enforcement by going to court.



(Date)

(Name of lender or creditor)

(Name of department the letter should go to,
e.g. 'Customer service department')

(Address of lender or creditor)

Phone the lender or creditor and ask which specific department to send your request for postponement to.

Dear Manager,

Request for a postponement of enforcement proceedings

Account name:

Account no:

I/We currently have a loan/account with (name of creditor) _____.

The account number is _____ and I/we pay \$ _____
each (\$ per week/fortnight/month).

On (date) _____ your organisation began enforcement action to
(repossess my/our goods/car/home/insert your details) _____.

I/we ask that you postpone the exercise of your rights and postpone
any applicable acceleration clause under the contract.

I/We anticipate being in a position to:

1. pay out the loan on (date) _____ .
2. pay the arrears owing (and any payments
falling due during that time) on (date) _____ .

Choose one option only

Please consider this application as a matter of urgency.

I/We assume you will stay all enforcement action while you consider
this application.

If this is not possible, please let me/us know immediately in writing.

I/We await your reply in writing.

Yours sincerely,

(Full name)

If you dispute the debt because you do not owe the amount claimed, only owe part of the amount, or think you have a defence:

- ▶ Contact your lender or creditor and tell them you dispute the debt.
- ▶ Get legal advice immediately. See page 29 for contact details.
- ▶ Consider lodging a complaint immediately with the Financial Ombudsman Service Limited (FOS) or the Credit Ombudsman Service Limited (COSL). See page 30 for contact details.
- ▶ If you have a defence against paying the debt, you will also need to file documents with the court. You should get legal advice before doing this.

You must act immediately to file the necessary documents in the correct way and within the necessary timeframes. If you don't, a judgment will generally be entered against you.

What is a defence?

A defence is a legal reason why a debt cannot be enforced by a court. For example, there are laws that stop debts being collected through the courts after a certain period of time: see 'What about old or 'statute-barred' debts?' opposite.

Quick tip



You might still be able to negotiate a repayment plan, even if a court order has been made against you.



What about old or 'statute-barred' debts?

You may have a defence against a debt if:

- ▶ a long period of time has passed since you last made a payment or confirmed the debt in writing.
- ▶ no court action has been taken to recover the debt in the meantime.

Generally, you can raise this as a defence if 6 years have passed since you last made a payment or confirmed the debt, and there is no court judgment against you. In the Northern Territory, the time period is 3 years.

If this is the case, recovery of the debt through the courts is said to be 'statute-barred' and the courts will not enforce the debt.

If there is no court judgment against you and you make another payment, the clock will usually start again and normally you will not be able to rely on this defence anymore.

If you think a debt collector is contacting you about a debt that is 'statute-barred', you should get legal advice before you make any payment or confirm the debt in writing.



Your legal rights and protections

Debt collectors must act within the law when recovering debts. This means they must obey laws that are designed to protect you from misconduct. Under these laws, a debt collector must not:

- ▶ use physical force or coercion (forcing or compelling you to do something)
- ▶ harass or hassle you to an unreasonable extent
- ▶ mislead or deceive you (or try to do so)
- ▶ take unfair advantage of any vulnerability, disability or other similar circumstance affecting you (this is known as 'unconscionable conduct').

These laws also apply to a debt collector's conduct towards your spouse, partner, family member or other person connected with you.

Other laws also apply to debt collection. See 'To find out more' on page 27.



Quick tip

While you should not accept misconduct by a debt collector, such misconduct will not affect whether you are liable for the debt.



Unacceptable behaviour by debt collectors

The types of conduct set out below are likely to breach consumer protection laws, and may breach other laws as well. This is not a complete list.

If you experience any of these behaviours (or other similar misconduct), you should take action. See 'To find out more' on page 27.

Extreme conduct – force, trespass, intimidation

If you are confronted by extreme conduct, report it to the police immediately.

Debt collectors must not:

- ▶ use or threaten force of any kind towards you, any member of your family or any other person connected with you
- ▶ damage or threaten to damage your property
- ▶ block access to your property, or block your way
- ▶ enter your property when you have refused permission, or fail to leave when you ask them to.

Unreasonable conduct – harassment, verbal abuse, overbearing manner

Debt collectors must not:

- ▶ shout at you or abuse you, use obscene or racist language or make personal or demeaning comments (you might also want to report this conduct to the police)
- ▶ contact you more frequently than necessary or at unreasonable times – for example, it is unacceptable to keep phoning you without a break or to contact you late at night or at other unreasonable times as a way of demoralising or exhausting you (see 'When, where and why can you be contacted about a debt?' on page 8)
- ▶ make other persistent contact or unreasonable disturbances.

Embarrassing or intimidating you through other people

Debt collectors must not:

- ▶ threaten or harass your spouse, partner, family member or any other person connected with you
- ▶ make any unauthorised contact with a child under the age of 18 years
- ▶ talk about your situation to other people (including family members, neighbours or co-workers) unless you have agreed to the contact – such actions may also breach privacy laws (see page 30)
- ▶ engage in conduct that draws people's attention to your situation (e.g. send open letters to a shared post-box, leave messages that others may listen to, make their identity or purpose known to people you work with – again, such actions may also breach privacy laws).

False or misleading statements and/or conduct

Debt collectors must not:

- ▶ Make false statements about the amount you owe, or the status of your debt – for example:
 - ▶ say you owe a debt when you do not
 - ▶ say the amount you owe is greater than it is
 - ▶ say that you have no choice but to pay a debt if you have a valid defence against payment, unless there has been a court judgment (see 'Disputing a debt' on page 13)
 - ▶ say that your spouse or partner must pay your debt when they have no legal liability to do so (see 'Are you responsible for someone else's debt?' on page 5)
 - ▶ say that there has been a court judgment if this is not true.



- ▶ Make false statements about what will happen if the debt is not paid, or what they intend to do – for example:
 - ▶ say that unpaid debts are a criminal offence involving the police or possibly jail (being in debt is not a crime)
 - ▶ say that your children can be taken away from you (this is completely false)
 - ▶ say that you will be made bankrupt immediately, even though there has been no court judgment or bankruptcy proceedings started
 - ▶ say that your goods (e.g. your car) will be seized and sold immediately, even though there is no mortgage over the goods and no court judgment (if there is a mortgage over the goods, generally you must be given notice and 30 days to pay first)
 - ▶ say that your wages will be garnished (taken), even though a court order to allow this has not been obtained
 - ▶ say that your credit rating will be damaged, if that is not true (privacy laws limit the type of information that a credit reporting agency can hold on file, how long it can be on file, and who can access the information).

Debt collectors must not use misleading or deceptive conduct – for example:

- ▶ send letters demanding payment that are designed to look like court documents
- ▶ pretend to be (or pretend to act for) a solicitor, court or government body.



Other unfair or unconscionable conduct

Debt collectors must not:

- ▶ take unfair advantage of you if you are specially disadvantaged because of illness, disability, age, illiteracy or other circumstance
- ▶ take unfair advantage of you if you are ignorant of the law, the debt recovery process, or the consequences of not paying a debt.

Make a complaint

If you are unreasonably contacted or harassed by a debt collector, you should make a formal complaint by writing a letter to the debt collection company. If you are not satisfied with their response, you should take your complaint to the creditor's independent dispute resolution scheme (in the case of consumer credit) or complain to ASIC or the ACCC (if the debt is not the result of a loan).



Sample letter

Opposite is an example of a letter of complaint about a debt collector that might help you write your own letter.



(Date)

(Name of debt collector or creditor)

Complaints department

(Debt collector or creditor's address)

Dear Sir/Madam,

Re Debt owed to (name of creditor) _____

Account No:

I wish to lodge a complaint regarding the debt collection practices of
(name of debt collector or creditor) _____.

Provide the details of your experience of harassment by the debt collector. Include dates, times, events and names of people involved.

See next page for examples of harassment.

I demand this harassment stop immediately.

If the harassment does not stop I will take further action as necessary, including making a formal complaint to the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission (if the debt is not the result of a loan), the Office of Fair Trading and your external dispute resolution scheme.

Finally, I request that all future correspondence in this matter be in writing.

Yours sincerely,

(Full name)

Examples of harassment

Example 1

A representative of your business (representative's name) has been ringing me very frequently. During the last 4 weeks I have been contacted over 30 times by phone. Some of those phone calls occurred after 9 pm. This is inconsistent with the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission's Debt Collection Guideline 4.

Example 2

A representative of your business, (representative's name), rang my workplace (name of workplace) and spoke to a co-worker of mine. Your representative asked my co-worker for personal details about me, including my home address and phone number and told them how much money I owed you. This embarrassed me and harmed my professional reputation and is inconsistent with the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission's Debt Collection Guidelines 6 and 7.

Example 3

A representative of your business, (representative's name), rang me on (date). I was told I owed a debt and if I did not pay the debt immediately, my possessions would be seized. I dispute owing the debt. There is no court judgment against me that would allow my possessions to be seized. This is inconsistent with the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission's Debt Collection Guideline 12.



To find out more

Getting advice from a financial counsellor

Sometimes people need help to:

- ▶ plan and manage their finances better
- ▶ negotiate with debt collectors
- ▶ deal with a debt crisis.

A free and independent financial counselling service may be able to help you if you are in any of these situations. Financial counsellors will help you to look at all the options available to you. There are also special services to help people with gambling problems.

Financial counselling services are available in every state and territory.

Australian Financial Counselling and Credit Reform Association (AFCCRA)

For details of financial counselling organisations around Australia, look under 'Counselling' on AFCCRA's website.

www.afccra.org

or call the National Financial Counselling Hotline during business hours on 1800 007 007

For an up-to-date list of financial counselling organisations, you can also go to ASIC's consumer website, MoneySmart.

www.moneysmart.gov.au

or call ASIC's Infoline on 1300 300 630 (for the cost of a local call)

Getting a copy of your credit report

Your credit report has information about you and your credit history. You might want to get a copy of your report to check that the information is accurate and fix any mistakes.

For information about how to get a copy of your credit report from the credit reporting agency, ask a financial counsellor, visit the AFCCRA website or ASIC's consumer website, MoneySmart.

Australian Financial Counselling and Credit Reform Association (AFCCRA)

www.afccra.org

MoneySmart

www.moneysmart.gov.au

or call ASIC's Infoline on 1300 300 630 (for the cost of a local call)

Finding out about bankruptcy

For some people in debt crisis, bankruptcy or a Bankruptcy Act agreement may be an option, although this has serious consequences. A free and independent financial counselling service can provide information about bankruptcy and its alternatives. If you are thinking about bankruptcy as an option, it is very important that you get advice from a free and independent financial counsellor, or qualified financial adviser.

You can also get information from Insolvency Trustee Service Australia (ITSA).

Insolvency Trustee Service Australia (ITSA)

ITSA is the government body that regulates bankruptcy.

www.itsa.gov.au or phone 1300 364 785



Getting legal advice

Many people who have legal problems because of debt will not be able to pay for a private solicitor.

Free legal aid and community legal services may be able to help in these cases. These services are available in every state and territory.

In some courts, chamber magistrates can also give initial advice to people who have had civil proceedings brought against them.

National Association of Community Legal Centres (NACLC)

Look under 'CLC Directory' on the NACLC website for details of over 160 community legal centres across Australia.

www.nacclc.org.au or phone 02 9264 9595

For an up-to-date list of community legal services, you can also look in the 'Community Advisory Services' section of the Yellow Pages.

Legal aid

Legal Aid Commission (ACT)

www.legalaid.canberra.net.au or phone 02 6243 3471

Legal Aid New South Wales

www.legalaid.nsw.gov.au or phone 02 9219 5000 or 1300 888 529

Victoria Legal Aid

www.legalaid.vic.gov.au or phone 03 9269 0234 or 1800 677 402

Legal Aid Commission of Tasmania

www.legalaid.tas.gov.au or phone 1300 366 611

Legal Aid Western Australia

www.legalaid.wa.gov.au or phone 1300 650 579

Legal Services Commission of South Australia

www.lsc.sa.gov.au or phone 08 8463 3555 or 1300 366 424

Northern Territory Legal Aid Commission

www.ntlac.nt.gov.au or phone 1800 019 343

Legal Aid Queensland

www.legalaid.qld.gov.au or phone 1300 651 188

Finding out about your privacy rights

Debt collectors must protect your personal information and the personal information of third parties. The Office of the Privacy Commissioner (Federal) looks after these laws.

Office of the Privacy Commissioner

www.privacy.gov.au or phone 1300 363 992

Making a complaint

You can complain to an independent dispute resolution scheme if you have a disagreement about a debt with a member of the scheme. You will also be able to complain to a dispute resolution scheme if legal proceedings relating to debt recovery have been brought against you and you have not taken a step beyond lodging a defence (or defence and counterclaim).

These schemes are available to consumers free of charge, and scheme members must comply with their decisions.

Banking, credit and finance

Financial Ombudsman Service Limited

www.fos.org.au or phone 1300 780 808

Credit Ombudsman Service Limited

www.cosl.com.au or phone 1800 138 422



Energy, water and telecommunications

Australia-wide – Telecommunications Industry Ombudsman

www.tio.com.au or phone 1800 062 058

ACT – Essential Services Consumer Council

Phone 02 6207 7740

Energy Ombudsman Queensland

www.eoq.com.au or phone 1800 662 837

Energy and Water Ombudsman New South Wales

www.ewon.com.au or phone 1800 246 545

Ombudsman for the Northern Territory

www.ombudsman.nt.gov.au or phone 1800 806 380

Energy Industry Ombudsman South Australia

www.eiosa.com.au or phone 1800 665 565

Energy Ombudsman Tasmania

www.energyombudsman.tas.gov.au or phone 1800 001 170

Energy and Water Ombudsman (Victoria)

www.ewov.com.au or phone 1800 500 509

Energy Ombudsman Western Australia

www.ombudsman.wa.gov.au/energy or phone 1800 754 004

Contacting state and territory consumer affairs agencies

State and territory consumer affairs or fair trading agencies look after fair trading laws, which include similar prohibitions to Commonwealth consumer protection laws.

State and territory consumer affairs agencies license or register independent debt collection agents. You can complain to your state or territory consumer affairs agency about harassment.

Offices of fair trading and consumer affairs

ACT Office of Regulatory Services

www.ors.act.gov.au or phone 02 6207 0400

NSW Fair Trading

www.fairtrading.nsw.gov.au or phone 13 32 20

Consumer Affairs Victoria

www.consumer.vic.gov.au or phone 1300 558 181

Tas – Consumer Affairs and Fair Trading

www.consumer.tas.gov.au or phone 1300 654 499

WA – Department of Commerce

www.commerce.wa.gov.au or phone 1300 304 054

SA – Office of Consumer and Business Affairs

www.ocba.sa.gov.au or phone 08 8204 9777

NT – Consumer Affairs

www.consumeraffairs.nt.gov.au or phone 1800 019 319

Qld – Department of Employment, Economic Development and Innovation, Office of Fair Trading

www.fairtrading.qld.gov.au or phone 13 13 04



Complaining about harassment or misconduct by debt collectors

The ACCC and ASIC look after the Commonwealth laws that protect people from undue harassment and other illegal debt collection conduct.

You may want to discuss concerns about misconduct directly with the debt collector. Tell them you believe their conduct is unacceptable and refer them to this brochure, or to the *Debt collection guideline: for collectors and creditors* produced by the ACCC and ASIC.

You should report harassment that is serious and/or ongoing to the ACCC or ASIC, or to the consumer affairs or fair trading agency in your state or territory (see opposite page).

Conduct involving assault or threats of violence should be reported to the police.

The consumer protection responsibilities of the ACCC and ASIC are outlined below. For more information, see our joint brochure *Complaints about debt collection activity – the responsibilities of Commonwealth agencies*, available on either the ACCC or ASIC websites.

Australian Competition and Consumer Commission

The ACCC is the general consumer protection regulator.

If your debt relates to goods and services generally, other than financial services (for example, phone or utility bills and debts to tradespeople or service providers), contact the ACCC.

Website	www.accc.gov.au
ACCC Infocentre	1300 302 502
Written complaints	GPO Box 3131 Canberra ACT 2601

Australian Securities and Investments Commission

ASIC is the financial services regulator. If your debt relates to a loan or credit card (or another financial service), contact ASIC.

Website	www.moneysmart.gov.au
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This website also provides general information about managing your money, loans and credit, and other financial matters.

ASIC Infoline	1300 300 630
Written complaints	ASIC Complaints PO Box 9149 Traralgon VIC 3844

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**Australian
Competition &
Consumer
Commission**

Contact the Australian Competition and Consumer Commission by visiting www.accc.gov.au or by phoning **1300 302 502**.



www.moneysmart.gov.au

ASIC Infoline: **1300 300 630**

Disclaimer

Please note that this is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

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