

What Can I Do When a Debt Collector Calls?

Use this fact sheet if:

- a creditor or debt collector has contacted you demanding that you pay a consumer debt; and
- legal proceedings have not been issued.

If you fall behind on a debt you might receive a call from the creditor's debt collection department, or from a debt collection firm that works for the creditor. Sometimes the creditor will sell the debt to another company, and that company will demand payment from you.

Step 1: Find out if they are chasing the right person for the right amount of money

Step 2: Seek legal advice about whether you have a defence

Step 3: Develop a plan of how to deal with the debt

Step 4: Stop any harassment by the creditor or debt collector

Step 5: Seek compensation for any stress or inconvenience caused by any harassment by the creditor or debt collector

Are they claiming the right amount from the right person?

Just because you are told by a debt collector that you should pay a debt doesn't mean that you owe the money.

Many debt collection agencies buy computer-based information about debts. Sometimes the original creditor will have incomplete information on its computer and will mistakenly sell a debt that has previously been paid or settled. Sometimes debt collectors even demand money from the wrong person. Carefully check your records (contracts, statements, receipts etc) before you agree to pay any money.

Before you make any payments you should check whether you owe the money that is being claimed.

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If your records prove that you do not owe the money, write to the debt collector stating that you don't owe the money. List the documents you have to show this.

If your records are not clear on whether you owe the money, write to the debt collector or creditor and ask for details of their claim and copies of documents that prove you owe the debt. You can use the sample letter at the end of this factsheet.

!WARNING!

DO NOT make any payment on old debts without reading our fact sheet *Do I have to pay an old debt?* and getting further advice if required from our telephone advice service (03 9629 6300/1300 881 020) or email advice service (advice@consumeraction.org.au).

Do I Have a Defence?

Even if your records show that you owe the debt, you might have a defence - a legal reason to argue that you cannot be made to pay – to part or all of the debt.

Some common defences are:

1. The debt is old and statute barred – that is, the debt collector or lender is outside the time provided by the law to sue for the debt. See our fact sheet *Do I have to pay an old debt?*
2. You were **misled or deceived** about what you were signing or getting when you first entered the contract
3. The circumstances surrounding the debt are **unjust or unconscionable**. For example, a bank has given you credit or increased your credit limit at a time when you could not afford to repay the money, and the bank knew or ought to have known that you could not repay the debt, or not without substantial hardship
4. **You are entitled to a hardship variation or arrangement** under one of the various credit, telecommunications or energy laws
5. The contract you signed contained **unfair contract terms** which affect the amount you have to pay. For example, a mobile phone contract might contain an unfair cancellation penalty.

There are many laws protecting consumers. **Seek legal advice so that you understand all your rights.**

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The Consumer Action Law Centre's free consumer advice line (03 9629 6300/1300 881 020 or advice@consumeraction.org.au) might be able to give you advice or point you in the right direction. Do not make any payments or accept that you owe the debt until you have received advice.

If you can't get advice immediately, you should write (remembering to date, sign and keep a copy of the letter) to the debt collector or creditor informing them that you are seeking advice and ask them not to commence legal action until you have obtained the advice.

How do I complain to an Ombudsman, or industry external dispute resolution scheme (EDR)?

If your enquiries result in a dispute with the creditor or debt collector there are a number of ways you can make a complaint.

If the dispute relates to a credit, telecommunications, energy or water company you should make a complaint to the EDR scheme to which the debt collector or the creditor belongs, such as:

- the Financial Ombudsman Service (<http://fos.org.au>)
- the Credit Ombudsman Service (<http://www.creditombudsman.com.au>)
- the Telecommunications Industry Ombudsman (<http://www.tio.com.au>) or
- the Energy and Water Ombudsman Victoria (<http://www.ewov.com.au>)

preferably before legal action is taken against you.

These schemes can investigate and help resolve your dispute. In most cases the company can't take legal action against you while your matter is being investigated by the EDR.

If one of the EDR schemes cannot help you, seek advice about whether the Victorian Civil and Administrative Tribunal (VCAT) or a Court might be able to resolve the dispute.

What if I agree that I owe money and can pay the full amount?

If you have funds available, pay the debt. You might wish to ask whether the debt collector would accept an amount less than the full amount claimed (see below). Use a

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method of payment that gives you proof of payment, such as a cheque or internet bank transfer. Keep your proof of payment for at least 7 years. Unfortunately, it is possible to be chased for a debt many years after it has been paid.

Can I offer to settle the debt for less?

Sometimes creditors and debt collectors are willing to accept a smaller amount of money as “*full and final settlement of the matter*”. It usually depends on how old the debt is, what your income and assets are, the difference between what you offer and what you owe and the total amount due. You should get free advice from a financial counselling service if you are unsure of what amount to offer. Any agreement by the creditor or debt collector to settle the debt for less should be in writing.

What if I agree that I owe the money and I can't pay?

If you are in difficult financial circumstances and you can't pay, you should seek advice from a free financial counselling service about your rights and options. There are a range of possible options available depending upon your circumstances including informal instalment arrangements, instalment arrangements through the court, formal arrangements under the Bankruptcy Act and filing for bankruptcy and simply not paying.

You can call Consumer Affairs Victoria on 1300 55 81 81 to request a referral to a free financial counselling service near you to find out what is your best option.

Are there limits on what debt collectors can do?

The law puts limits on what a debt collector can and cannot do when chasing a debt. Refer to our fact sheet *I'm being hassled by a debt collector* for detailed information about harassment and unfair debt collection practices.

Can I claim compensation if I have experienced harassment and unfair debt collection practices?

In some circumstances you can claim any financial loss, or compensation for stress and inconvenience, if a debt engages in harassment and unfair debt collection practices. Refer to our fact sheet *I'm being hassled by a debt collector* for more information.

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What Can I Do When a Debt Collector Calls?

Your Name
Your Address

Organisation
Address

Date

Dear (organisation),

Re: Alleged debt

I/We refer to your letter/phone call on (*date*) in which you claimed a debt of (*amount*) was owed.

To assist me/us to obtain advice about your claim please provide the following documents:

1. Copy of contract relating to the alleged debt.
2. Copies of any account statements from (*date*) to (*date*).
3. Details of how the amount of the debt was calculated.

Please forward this information to the above address.

Please note that in requesting the above documents and information, I/we am/are not acknowledging any liability for any amount alleged to be outstanding on the alleged debt.

Yours faithfully,

(*Your Name*)

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Free Advice & Assistance

Consumer Action Law Centre

Legal Advice line

Telephone: (03) 9629 6300, or 1300 881 020 for country callers.

Email: advice@consumeraction.org.au

Mon – Fri 10.00 am – 5.00pm

Free telephone and email advice regarding credit and debt and consumer law matters

Consumer Affairs Victoria

Walk-in service centre: Victorian Consumer & Business Centre

113 Exhibition Street

Melbourne 3000

Ph: 1300 55 81 81

Mon – Fri, 8.30am – 5.00pm

Consumer Affairs can help you resolve a dispute with a trader by informing you of your rights or by conciliating with the trader. They can also help you find your local financial counsellor who can give free advice and assistance with credit and debt problems, negotiating with creditors and budgeting.

www.consumer.vic.gov.au

Victoria Legal Aid:

Ph: (03) 9269 0234, or 1800 677 402 for country callers.

Mon – Fri 8.45am to 5.15pm.

VLA publishes a useful series of pamphlets on credit & debt issues that it will send to consumers free of charge.

www.legalaid.vic.gov.au

Federation of Community Legal Centres:

Ph: 9654 2204

To find your local community legal centre.

www.communitylaw.org.au

Dispute Resolution

Victorian Civil & Administrative Tribunal (VCAT)

General ph: 9628 9700,

country callers: 1800 133 055

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Civil List ph: 9628 9830

www.vcat.vic.gov.au

Industry Dispute Resolution Schemes

Financial Ombudsman Service

Tel: 1300 78 08 08

Email: info@fos.org.au

Website: www.fos.org.au

Credit Ombudsman Service Limited

Tel 1300 78 08 08

Email: info@creditombudsman.com.au

Website: www.creditombudsman.com.au

Energy & Water Ombudsman (Victoria) EWOV

Tel: 1800 500 509

Email: ewovinfo@ewov.com.au

Website: www.ewov.com.au

Telecommunications Industry Ombudsman (TIO)

Tel: 1800 062 058

Email: via website

Website: www.tio.com.au

Regulators

They investigate industry conduct & are unlikely to assist with individual complaints.

Australian Securities & Investment Commission (ASIC)

Complaints about conduct of financial services, including debt collection of consumer credit:

Ph: 1300 300 630

www.asic.gov.au

Australian Competition & Consumer Commission (ACCC)

Complaints about conduct of businesses including debt collection complaints: (Not complaints about credit or financial services).

Ph: 1300 302 502

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www.accc.gov.au

Consumer Affairs Victoria (CAV)

CAV also has a role in enforcing and ensuring compliance with Victorian consumer laws.
See above for details

Telephone Services

Telephone interpreter service:

Free to callers. Available 24 hours, Ph: 13 14 50.

Hearing & Speech Impaired Access:

National Relay Service All free calls (within Australia)
1800 555 677

Speech to Speech Relay

All local and chargeable calls (within Australia): 1300 555 727

All free calls (within Australia): 1800 555 727

You can obtain more information about the National Relay Service on their website at

www.relayservice.com.au/

Acknowledgments

This fact sheet is part of a series produced by Consumer Action Law Centre.

Other fact sheets in this series are available at the Consumer Action Law Centre website or by phoning us on (03) 9629 6300 or 1300 881 020

Thanks to Consumer Credit Legal Centre (NSW) Inc. for permission to use material from CCLC fact sheets.

Consumer Action Law Centre factsheets, are available at: www.consumeraction.org.au

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