

FS12 I'm Being Hassled by a Debt Collector

Use this fact sheet if you:

- Are being hassled by a debt collector or
- Think that a debt collector or a lender might be acting unfairly

If you don't think you owe an amount claimed by a debt collector or a lender you may find other Consumer Action Law Centre fact sheets answer your questions:

- Refer to fact sheet '*How do I get more information about my loan?*' if you want more details about your loan
- Refer to fact sheet '*Do I have to pay an old debt?*' if you are being asked to pay an old debt,
- refer to fact sheet '*What can I do if a debt collector calls?*' if a debt collector visits.

What Can Debt Collectors Do?

You might have a legal obligation to pay a debt – but that doesn't give a debt collector or a lender the right to do anything they want to make you pay. If you owe money, you have rights - there are laws controlling the behaviour of debt collectors and lenders. They do not have the same powers as police officers or court sheriffs.

Debt collectors do not have the power to:

- Send you to gaol or fine you;
- Seize your furniture or other belongings unless they have a mortgage over them;
- Take money from your income unless they have taken legal action and obtained a court judgment.

It is misleading for debt collectors to threaten to take your property or basic furniture unless the lender has a mortgage over them. In Victoria, only a court sheriff has the right to enter your home to check whether you have any property that can be sold to pay your debts.

However, the sheriff cannot enter your house unless you have given permission and they cannot take necessary household property.

Pressure from Debt Collectors

It can be stressful when a debt collector pressures you to pay a debt, particularly if you are unable to pay.

If you believe you owe the debt, and you are able to pay it in full then this might be the best option. Alternatively, you might be able to an agreement to pay by instalments. Many people think that paying a small amount off the debt will stop the pressure from the debt collectors. However, you may find that if you respond to a debt collector's demands, they will increase the pressure to

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

pay, believing that their tactics are working. Knowing your rights will put you in a better position to negotiate with a debt collector if they can take against you to collect the debt. For more information refer to Consumer Action Law Centre *fact sheet 3, I can't pay my loan.*

What are my rights when I owe a debt?

You have rights to complain about illegal or unfair conduct and the right to:

- Have another person represent you, for example a financial counsellor or lawyer;
- Ask the debt collector to take court action instead of contacting you;
- Ask the debt collector not to contact you at a particular place (e.g. your work), however you must give alternative contact details;
- Have the debt collector send you information and documents relating to the alleged debt (not in all cases).

Remember you don't have to answer any questions from a debt collector.

What debt collector behaviour is illegal?

Certain behaviour by debt collectors is illegal, including:

- Misleading you about what action the debt collector can take, or about the debt (for example telling you there is court judgment against you when there isn't);
- Sending you a summons (court complaint) that has not been issued by a court;
- Using or sending you any document that looks like a court or tribunal document;
- Disclosing information about the debt to other people;
- Refusing to leave your home or workplace when you ask;
- Contacting you in a way that you have asked them not to (eg. Calling you at work) unless there is no other method available;
- Using physical force; and
- Unduly harassing or coercing you.

How do I know if acts by debt collectors are harassment or coercion?

ASIC and the ACCC have developed a set of guidelines that set out what debt collectors and creditors should and should not do in order to minimise the risk of them breaching the law. Some of the guidelines are not legally enforceable against debt collectors and creditors, though in many cases they are. The guidelines are, however, legally enforceable against banks and their agents. If a debt collector breaks these guidelines their action may not be illegal, but you should still lodge a complaint against them.

Click on this link to download a pdf copy of the guidelines:

[http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC/ASIC_Debt_Collection_Guideline.pdf/\\$file/ACCC-ASIC_Debt_Collection_Guideline.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC/ASIC_Debt_Collection_Guideline.pdf/$file/ACCC-ASIC_Debt_Collection_Guideline.pdf)

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.

FS12 I'm Being Hassled by a Debt Collector

The guidelines provide that a debt collector should not:

- Contact you outside reasonable hours, which are:
 - By telephone: Monday to Friday 7.30am to 9.00pm, Weekends 9.00am to 9.00pm and not on public holidays.
 - Face to face contact: Monday to Sunday 9.00am to 9.00pm and not on public holidays.
 - Workplace contact: your normal working hours if known, or 9.00am to 5.00pm weekdays.
- Call you back immediately after you have terminated a phone call;
- Make more than three contacts per week by letter or phone call or more than ten contacts per month;
- Make face to face contact with you more than once per fortnight;
- Visit you at your home or work unless there is no other way to contact you or you have agreed to it;
- Visit you at your workplace if you have asked them not to do so, and you have provided an alternative and effective means for you to communicate with you.
 - If a debt collector does visit your workplace, they must not discuss the debt in front of your co-workers or reveal to your co-workers that they are visiting your workplace in relation to the debt. They must also leave your workplace if asked to do so.
- Tell your employer or co-worker that you have a debt unless this is done through the court in relation to an attachment or earnings;
- Engage in 'undue harassment' – unduly frequent contact designed to wear you down or exhaust you, such as telephone calls in rapid succession.
- Make contact if you are maintaining agreed payments (with some exceptions);
- Mislead you about your legal responsibility to pay a statute barred (old) debt;
- Threaten legal proceedings if legal proceedings are not possible, or the collector knows you have a defence at law (such as the debt being statute barred or you being a bankrupt).
- Mislead you about the consequences of non-payment of the debt;
- Contact you directly if you have a financial counsellor or solicitor (or other person) acting on your behalf;
- Threaten to list the debt on your credit report if the debt is already listed, the collector has no instructions or intention to list the debt, the listing is not allowed by law or the collector does not have genuine belief that you are liable for the debt.
- Use abusive, threatening or discriminatory language or aggressive or intimidating behaviour or threaten or use physical force or violence against you, your property or someone you know.
- Mislead, threaten, harass or pressure your children, spouse, member of your family or friends.

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

What can I do to stop harassment or unfair conduct?

The most effective way of stopping unfair, or illegal debt collection practices is to send a written complaint to:

- the relevant industry external dispute resolution scheme (EDR), or
- the relevant regulator (see contacts below).

It is **important** to send a copy of your complaint to the debt collector and/or lender. Keep detailed written records of what is happening - note down the name of any person you speak to, the date and the time, a brief description of what happened and the names of any witnesses.

Write to the debt collector and demand that they stop the harassment. (Refer sample letter). Keep a copy of any letter you send. You can also contact the police if you feel physically threatened.

Sample Letter

Your Name
Your Address

Name of EDR Scheme/Regulator
Address of EDR Scheme/Regulator

Date

Dear (*EDR Scheme/Regulator*)

Re: (Name of Debt Collector and Name of Lender)

I am writing to lodge a complaint regarding the debt collection practices of (*name of debt collector/lender*).

I consider the following actions used by (*name of debt collector/lender*) to be undue harassment:

List the actions or statements that you believe to be unfair/illegal. Include dates and the names of staff members if possible.

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

These actions have caused me considerable distress and embarrassment.

If you are writing to an EDR Scheme:

I demand that you take action to stop them immediately.

If you are writing to a Regulator:

I demand that you investigate these actions for breaches of the debt collection guidelines.

Regards,

Your Name

What happens after I make a complaint?

The EDR scheme will usually investigate your complaint by asking the lender to respond to your claims. If the EDR scheme agrees that the actions are undue harassment you can ask for a written apology and a promise that the actions will not continue. If you prove serious harassment, lenders sometimes agree to reduce the amount claimed. Any reduction in a debt should be confirmed in writing.

Regulators are primarily responsible for monitoring the behaviour of the debt collection industry rather than trying to settle individual complaints. Your complaint may lead the regulator to commence court action against the debt collector/lender.

A written complaint shows you are serious about defending your rights and sometimes has the effect of stopping the harassing behaviour.

Once you have stopped the harassment you may need some advice about challenging or repaying a debt. See the *Getting Help* section below for a list of services offering free advice on dealing with debts.

Who can I complain to?

The following government authorities have responsibility for monitoring the behaviour of debt collectors:

Consumer Affairs Victoria (CAV):

Ph: 1300 55 81 81

Mon – Fri, 9.00am – 5.00pm

www.cav.gov.vic.au

Australian Securities and Investment Commission (ASIC)

Ph: 1300 300 630 Mon – Fri: 9am to 5pm

www.asic.gov.au

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

Australian Consumer and Competition Commission (ACCC):

Ph: 1300 302 502 Mon – Fri: 8.30am – 5.30pm

www.accc.gov.au

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 9.00 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, 9.00am – 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

Insolvency and Trustee Service of Australia

Ph: 1300 364 785

ITSA is not an advice service but it can send information about bankruptcy and forms.

www.itsa.gov.au

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

Dispute Resolution

Victorian Civil & Administrative Tribunal (VCAT)

**General ph: 9628 9700,
country callers: 1800 133 055**

Credit List ph: 9628 9790

Civil List ph: 9628 9830

www.vcat.vic.gov.au

Federal Privacy Commissioner

Ph: 1300 363 992 (Privacy Hotline)

To complain about credit reporting or other breaches of privacy: www.privacy.gov.au/

Industry Dispute Resolution Schemes

Banking and Financial Services Ombudsman

1300 78 08 08

A central telephone number to the appropriate scheme, for disputes with:

- banks
- insurance companies (claims disputes)
- credit unions
- finance brokers
- investment advisors

Credit Ombudsman Service Limited

Tel 1300 78 08 08

Email info@creditombudsman.com.au

Website: www.creditombudsman.com.au

The Credit Ombudsman Service is a free and independent External Dispute Resolution scheme. It provides consumers with an alternative to legal proceedings for resolving disputes with Members operating in the Credit marketplace.

Energy & Water Ombudsman (Victoria) EWOV

Tel: 1800 500 509

www.ewov.com.au

Telecommunication Disputes

Telecommunications Industry Ombudsman (TIO)

Ph: 1800 062 058 or www.tio.com.au

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.



FS12 I'm Being Hassled by a Debt Collector

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

www.accc.gov.au

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.aceinfo.net.au/Services/NRS/

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

Warning: This fact sheet is for information only and should not be relied upon as legal advice. This information applies only in Victoria and was updated on May 29 2007.