

FS14 How do I make a complaint about a debt collector or creditor?

Use this factsheet if you want to:

- **Want to complain about the actions of a lender, debt collector or other financial service provider.**
- **Want to know more about external dispute resolution (EDR) schemes and regulators.**

What should I do first?

Before you make your complaint you should work answer the following three questions:

- What am I complaining about?
- What result do I want to get from making a complaint?
- What is the most appropriate organisation to take my complaint?

What am I complaining about?

It can be difficult and frustrating to explain your problem to someone else, especially when documents and payments are involved. Sometimes it helps to write down in point form what has happened before you write a complaint letter or telephone someone. If you know the facts and figures you will be in a better position to explain your problem to someone else.

What result do I want?

You should be clear about the result you want to achieve from your complaint.

For example, you might want:

- information corrected on a statement or credit report,
- financial compensation,
- an apology,
- a lender to stop harassing you, or
- to report the conduct to a regulator so they are aware that there are problems with that particular lender.

Sometimes you will need to get information about your rights to get more of an idea of what sort of result you want.

This information could be available on the Internet, check that the information is relevant to Victoria and that it is from a trusted source. Publications such as the Fitzroy Legal Service Law Handbook, available at local libraries, can be helpful.

Advice is available from one of the organisations listed at the end of this fact sheet.

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Where should I complain?

There are many organisations that take complaints about consumer credit and debt problems. Each organisation has a different role in dealing with complaints. Be aware that not many organisations can fight a case for you in the same way that a solicitor would. Make sure that you understand what the organisation can do with your complaint – if you are not sure, ask.

Depending on the organisation its role might be one or more of the following:

- To provide free information or advice to help you resolve the problem,
- To act on your behalf in resolving the complaint,
- To conciliate to help you and the lender to work out a solution,
- To investigate the complaint to enable a regulator to penalise the lender for breaching the law,
- To investigate the complaint and, if the matter is not settled, make a decision that is binding on the lender,
- To hear both sides of a dispute and make a decision binding on both parties.

Should I contact the lender first?

Complaining directly to the lender can be the quickest way to resolve your complaint.

However, if the lender's conduct is serious, or causing you significant problems, you might wish to complain elsewhere.

If you write to the lender or debt collector state what the problem is and how you want it resolved. Always keep a copy of any letters you send as this could help you later if you need to show that you have advised the lender of your complaint.

If there are a number of companies involved, for example a bank and a debt collector, you should send the complaint to one, with a copy to the other.

If a debt collector or lender has started legal action against you, get advice about defending the action before you put in a written complaint. Refer to the contact section at the end of this fact sheet for a list of organisations that offer free advice.

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How do I write my complaint?

When you make your complaint you should:

- outline what the problem is,
- describe how the problem affected you,
- state what you want to happen to resolve your complaint, eg) an apology, a stop to harassing calls,
- give a deadline for a response depending on the type of complaint,
- state what action you will take if there is not a satisfactory response.

Regardless of whom you complain to, you should expect to receive a reply or a confirmation receipt of your complaint within 2 weeks. You should be told the name of the person dealing with your complaint and when you should receive a response.

A lender should take no more than 45 days to sort out your complaint unless there are exceptional circumstances.

What are Industry External Dispute Resolution (EDR) Schemes?

If you are unsatisfied with the lender's response, find out if they are a member of an EDR scheme such as the Banking Ombudsman. EDR schemes are funded by industry, but are independent bodies.

All banks and credit unions are members of an EDR scheme, as are insurance companies and some mortgage brokers.

Most EDR schemes:

- Require you to complain to the lender first,
- Will investigate your complaint, taking into account information provided by you and the lender,
- Can make a decision that is binding on the lender but not on the consumer unless the consumer accepts the decision,
- Have a rule that stops a lender starting or continuing with enforcement action on a debt once you have lodged a complaint with the scheme. You should check this with each EDR scheme.

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How do I find the right EDR scheme?

Most EDR schemes can be contacted by ringing a central number: 1300 78 08 08.

An adviser at this central number will give you the contact details of the relevant EDR scheme for your matter. In some cases the adviser will also be able to connect you directly. Once you have the contact details of the relevant EDR scheme send them your written complaint.

Some of the EDR schemes are:

Banking and Financial Services Ombudsman (BFSO)

Ph: 1300 780 808

www.bfso.org.au

Credit Union Dispute Resolution Scheme (CUDRC)

Ph: 1300 780 808

www.cudrc.com.au

Credit Ombudsman Service Limited (formerly Mortgage Industry Ombudsman)

Ph: 1300 78 08 08

www.creditombudsman.com.au

Who is the state regulator?

Consumer Affairs Victoria (CAV)

CAV is a government department, and can assist by:

- providing information,
- conciliating with lenders, or
- using some complaints for prosecutions and other enforcement action against traders.

Who are the national regulators?

There are two Australia-wide regulators for credit and debt problems:

- **Australian Securities Investment Commission (ASIC)**; and
- **Australian Competition & Consumer Commission (ACCC)**.

ASIC regulates financial services, including some practices of lenders and debt collectors, such as harassment, misleading conduct and other unfair practices.

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ACCC does not deal with complaints about financial services or credit. However, it does take some debt collection complaints where the debt was not credit – for example, phone bills.

The national regulators do not have consumer dispute resolution functions.

They do not conciliate or advocate for individual consumers. The role of these government agencies is to “police” the practices of industry.

A complaint to a regulator will help the regulator to monitor industry practices and, if there are a number of similar complaints, it might be used to take enforcement action against the lender or debt collector.

There are two benefits of complaining to a regulator:

- It can help the regulator take action to stop unfair practices and lead to improved behaviour by debt collectors and lenders in the future;
- If you send a copy of your complaint to the lender (debt collector) it sometimes encourages them to resolve your complaint.

Other Complaints Bodies

If there is no EDR scheme for the relevant lender, your options for resolving your complaint are generally conciliation by Consumer Affairs or having the matter heard by a tribunal or court.

Victorian Civil & Administrative Tribunal (VCAT)

VCAT is similar to a Court, but it aims to be more consumer friendly. If you lose a dispute in VCAT it is unlikely that you will be ordered to pay the other side’s legal costs.

You are allowed to have your own solicitor in most credit disputes, but you are not usually allowed to have your own solicitor in other consumer matters eg) disputes with a car dealer.

However, depending on your complaint, there might be other bodies that can assist. For example, a complaint about an inaccurate credit report can be made to the Federal Privacy Commissioner after you have complained to the lender. If none of the bodies mentioned here can assist with your complaint, get advice from one of the contacts below and find out who can help.

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Free Advice & Assistance

Consumer Affairs Victoria

Ph: 1300 55 81 81 Mon – Fri

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 9am – 5pm.

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

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

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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, Insurance and Investment Assistance

Ph: 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

Water, gas and electricity disputes

Energy & Water Ombudsman (Victoria) EWOV

Tel: 1800 500 509

www.ewov.com.au

Telecommunication disputes

Telecommunications Industry Ombudsman (TIO)

Ph: 1800 062 058

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

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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 interpreter service:

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

Hearing & Speech Impaired Access:

National Relay Service

All free calls (within Australia)

133 677

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.

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

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