

How do I change my loan payments if I have suffered hardship?

Use this fact sheet if you:

- cannot pay your loan because you have been ill, lost your job, or have some other reasonable cause,
- think that you could manage the loan if the monthly payments were reduced, or changed in some other way.

What if the lender suggests that I refinance my loan?

The lender might suggest that you refinance your loan. Be careful as this can be expensive and you might have other options.

How can the consumer credit laws help me if I am having trouble with my loan?

If consumer credit laws cover your loan you might have a right to apply to get your payments changed so that you can better manage the loan.

Under the National Credit Protection Act 2009 (Cth) :

1. if you suffer hardship and cannot pay your loan then you have the right to apply to a lender for a change in the terms of the contract; and
2. if a lender does not agree to a change you have asked for, you can apply to the approved external dispute resolution scheme ('EDR scheme') for an order to change the terms of the contract.

You can also apply to the court for a hardship variation. You should seek legal advice for more information on the court process. Consumer Action Law Centre or one of the contacts listed below might be able to provide you with this advice.

Does the consumer credit legislation cover my contract?

The consumer credit laws cover most loans that are for personal, domestic or household (not business) purposes. If you took out your loan after 1 July 2010 then you can also seek variations to the terms and conditions for most loans taken out for purchasing, renovating or improving a residential property for investment purposes.

If you wish to use the hardship provisions as outlined in this fact sheet, your original loan must have been less than the 'hardship threshold amount' set by legislation. For loans taken out after 1 July 2010, the financial hardship threshold is \$500,000.

If you took out your loan before 1 July 2010 the hardship threshold amount changes monthly. (As a rough guide, the threshold amount was around \$388,080 in September 2010.) You can find out the current hardship threshold amount from

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ASIC's MoneySmart website: <http://www.moneysmart.gov.au/managing-my-money/managing-debts/trouble-with-debt/hardship-threshold>

What types of changes can I ask for?

There are 3 types of changes you can ask the lender for:

1. You can ask for your payments to be reduced for a period of time and for an extension to the term of your loan.
2. You can ask to postpone payments that are due on a specific date. Ask for this if you know that for a period of time you are going to need to make your repayments later than the date they are usually due.
3. You can ask for your payments to be stopped for a period of time, for example, 3 or 6 months and extend the term of your loan.

If your application for a variation is to have any chance of success, you will need to show that you will be able to pay your contract even though it will take a little longer. You will need to show that you are able to resume normal payments after a period of time, or that you will be able to maintain any reduced payments.

Acceptance of your variation application by the lender could depend on a range of factors, including your past payment history and the security for the loan. The lender will be thinking about the best way to make sure they get their money back.

Can I ask the lender to stop charging interest?

Yes, but a lender is under no obligation to do so and an EDR scheme or a court will not order that interest be stopped.

How much time can I add on to the end of my loan?

What will be accepted will depend on the circumstances. You should note that the longer the term of your loan, the more interest you will have to pay.

By how much can I reduce my payments?

The term of your loan will need to be extended if you reduce your payments. Neither a lender and nor an EDR scheme is likely to agree to a variation where the reduction in payments results in a long extension of the loan period.

How do I get a hardship variation?

Start by writing to the lender asking for the loan to be varied in a particular way. If the creditor refuses your application you can apply to the relevant EDR scheme for an order that the lender must vary the contract.

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Step 1: Write to the lender

You can use the following hardship variation sample letter.

Dear Sir/Madam

Loan Contract No: Date:

I am applying to you for a variation to the above loan contract under section 72 of Schedule 1 of the National Consumer Credit Protection Act 2009. I seek to change the terms of the above contract by: *(specify which of the changes set out in s72(2) you are requesting. You can ask for ONE of the following changes):*

- extending the period of the contract for (*XXX months*) and having the amount of each payment reduced accordingly to (*\$XXX a financial counsellor might need to calculate this figure*) without a change to the annual percentage rate. OR
- postponing the payment due on (*specify date*) so that it will now be due on (*specify new date and continue this for each payment you wish to be postponed*) without a change to the annual percentage rate.
OR
- extending the period of the contract to (*specify date*) and changing the due dates of payment without a change being made to the annual percentage rate as follows:

List old dates and then new dates eg.) payment due on 1 August 2010 postponed so that it is due on 1 January 2011, etc.

In support of my application I note that:

(Give details of illness, unemployment or "other reasonable cause".)

For example:

1. *At the time of signing the contract I was employed full time as a process worker with XXX*
2. *Soon after signing the contract I lost this job.*
3. *After being unemployed for approximately two months I commenced work as a XXX at XXX where I am currently employed.*

Give details of income and expenditure to demonstrate that you will be able to meet your obligations under the varied contract eg.: My current income is \$XXX per week, consisting of: list income, e.g. salary, maintenance, board etc My current expenses are: (list expenses).

As you can see I will be able to discharge my obligations under the contract if the changes sought above are made.

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Unless you respond to this letter by (*put a date in here, eg. 24 hours after you have faxed the application if the matter is urgent, or 14 days from the date on the letter if the matter is not so urgent.*) I will bring an application in the relevant external dispute resolution scheme.

Yours faithfully

(Sign and print your name)

It is common practice for lenders to reject your initial application. Sometimes a lender will refuse to negotiate any variation to the loan until you have lodged an application with the EDR scheme. Once the application is lodged, the lender often starts to negotiate rather than waiting for the application to go to a hearing.

Step 2: Apply to an approved external dispute resolution scheme

The lender might be about to take action in the Supreme Court or the Magistrates Court against you.

What if the lender has issued proceedings in the court?

If the consumer credit laws regulate your credit contract you can lodge your application for a financial hardship variation with the relevant EDR scheme even if court proceedings have commenced. If the lender has already sent you court papers, get advice *immediately* as you might need to file documents with the court at the same time as you make a hardship application to an approved external dispute resolution scheme. Currently, there are two ASIC approved EDR schemes: the [Financial Ombudsman Service](#), and the [Credit Ombudsman Service](#).

The effect of your complaint to an EDR scheme will be to prevent the creditor from proceeding with any court action while the dispute is being resolved. You **cannot** apply for a hardship variation to an EDR scheme once the lender has obtained a court judgment for debt against you, though you may apply to the court for an order to repay the debt by instalments.

Consumers can access these schemes for free. For both FOS and COS, you can lodge your dispute online or print out a pdf form and mail it to the relevant EDR scheme.

What if I am not eligible for a hardship variation?

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The lender might say that your contract is not covered by the consumer credit laws and/or claim that you are not eligible for a hardship variation. Do not accept this advice from the lender, as they can often be wrong. If you have signed a “business purposes” declaration you may, nevertheless, be able to argue that the loan is covered by the consumer credit laws. Get advice from Consumer Action Law Centre or one of the contacts listed below.

If your loan is not covered by consumer credit laws you may still be able to negotiate a variation with the lender. Consumer Action Law Centre may be able to provide you with a contact at the creditor you can speak to. You may also be able to get some assistance in negotiating with the lender from a financial counsellor. See below for how to contact a financial counsellor.

Free Advice

Consumer Action Law Centre:

www.consumeraction.org.au

Ph: (03) 9629 6300

Mon - Fri 10am to 5pm

Free telephone advice about consumer law matters.

External Dispute Resolution Schemes

Financial Ombudsman Service

Ph: 1300 78 08 08

www.fos.org.au

Credit Ombudsman Service

Tel: 1800 138 422

www.cosl.org.au

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