



## Debt - What Can Carers Do?

### **Use this Fact Sheet if:**

- You are a carer for, or relative of, a person with a disability that renders them unable to make decisions in their own best interests; AND
- That person has a credit card or other debt they are having difficulty paying; OR.
- You are having difficulty paying a credit card or other debt.

The following has been prepared for carers of people with special needs who have problems with credit card debt, however the information is also relevant to other people with other types of debt.

Over commitment on credit cards is a common problem which can arise through sudden loss of income, but also through irresponsible marketing of credit cards, and continued offers to increase credit limits.

Carers may find that the person they care for has accumulated a credit card debt they can't pay – or that the person continues to accept increased credit limits. The person may just be unable to pay, or legal action may have been threatened for non-payment. This article discusses the options for the person and the carer.

### **Should I Pay?**

#### Centrelink Recipients with no Assets

If the debtor's sole source of income is a Centrelink pension and s/he has no assets other than normal household goods (ie doesn't own a home or a car worth more than \$6000), then s/he can choose not to pay because even if a lender were to sue them for the debt, and get a court order (also called judgment) a court will not order that they repay the lender from their pension.

The debt does not go away, it continues to grow. This is not an issue for someone who has no expectations of earning an income or acquiring significant assets in the future. However, if the debtor returns to the workforce, or receives money or property (from an inheritance, for example) the lender may obtain an order for instalments from salary, or to sell any property acquired that is not a normal household item. Therefore it would be wise to seek advice about bankruptcy, which will ensure that the debt is cleared after three years.

**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 5 July 2010.



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A person cannot be jailed for not paying a debt. If the debt is not paid (or even if it is paid late) the lender may list a default on the debtor's credit report.

A default on a person's credit report will make it difficult for them to borrow money – and the information remains on the report for 5 years.

In circumstances where a person is unable to act in their best interests, or where they are using credit they can't afford to repay, **a default listing on a credit report can be a valuable protection.**

### Low Income or Without Assets

If the debtor has an income other than a Centrelink pension, once the lender has a court order, the lender can get an order that the debt be repaid from the debtor's wages or, if the debtor has assets other than normal household items, an order to seize and sell those goods. In these circumstances, a parent may wish to repay the debt in order to avoid this. But they should keep in mind that some debts are not legally enforceable and even if they are, there may be good reasons for a lender to accept a lower amount to settle the matter. Parents and carers should always contact a free legal service or free financial counselling service to see whether there is a legal defence or whether a lower repayment amount can be negotiated.

Bankruptcy is an option to be considered in these circumstances also. While it will not protect goods other than normal household items, it will protect a low or moderate income. A single bankrupt with no dependants can earn up to about \$44,000 a year net, before any money must be made available to pay lenders. Remember, bankruptcy lasts for three years only, so if a greater income is earned after that period, it is irrelevant because the debt is cleared at the end of that time.

### **Should Family/Carers Pay the Debt?**

This is for the family and carer to decide. They should keep in mind that if the debt is paid:

- there will be more credit available on the account that the person can use;
- there may be no default on the credit report and therefore the person may successfully apply for further credit;
- a lender may offer an increase in the credit limit; and
- unless action is taken to stop the person spending, payments made on their behalf will not help in the long term.

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### **Debt Collection**

When a debt collector requests payment, a simple letter stating that, while not acknowledging that the debt is owed, the debtor is a Centrelink recipient with no assets and that any court action to recover the debt will therefore be unsuccessful and therefore no further contact a debt collector is using harassing, or unfair, practices, you may complain to whichever of the two independent dispute resolution schemes (the Financial Ombudsman Service or the Credit Ombudsman Service Ltd) the debt collector or lender belongs to.

### **Has the Lender Been Irresponsible?**

Unfortunately, there is little to stop lenders from providing credit irresponsibly. However, if a lender has lent more than the person can afford to pay, a complaint to the Financial Ombudsman Service (FOS) or the Credit Ombudsman Service Ltd (COSL) may help. Where a lender has lent outside its own guidelines (for example more than they are supposed to based on income) the scheme can require the lender to remove some of the interest. The person can lodge a complaint with FOS or COSL, or seek the assistance of a free financial counselling service to help them do this. If successful, such as complaint might be resolved by a reduction in the amount owing and an agreement to a lower repayment. However, if the borrower cannot pay anything, this may not solve the problem.

**Don't panic. Don't pay someone else's debt without seeking advice first.**

### **Further Information and Assistance**

Members of the public, community and public sector caseworkers and lawyers can obtain credit and consumer law advice from our web-based advice service at [www.consumeraction.org.au](http://www.consumeraction.org.au).

Members of the public, community and public sector caseworkers and lawyers can also telephone our Advice Service, Monday to Friday, on 03 9629 6300 or 1300 881 020.

Advice and assistance can also be obtained from Consumer Affairs Victoria by calling 1300 55 81 81.

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