

## 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 good reason,
- 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 Code help me if I am having trouble with my loan?**

If the Consumer Credit Code (the Code) covers your loan you might have a right to apply to get your payments changed so that you can better manage the loan.

The Consumer Credit Code states that:

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 Victorian Civil & Administrative Tribunal (VCAT) for an order to change the terms of the contract.

### **Does the Consumer Credit Code cover my contract?**

The Consumer Credit Code covers most loans that are for personal and household (non business) purposes. Examples of consumer credit contracts are loans for cars, houses, home renovations, credit cards and debt consolidation loans. Unless your loan was mainly for a business purpose it should be covered by the Code. An example of a business loan would be if you bought a van to use as part of a delivery business.

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. The hardship threshold amount changes when house prices change. (As a rough guide, the threshold amount was around \$317,240 in May 2007.) You can find out the most recent hardship threshold amount from the government website:

[www.creditcode.gov.au](http://www.creditcode.gov.au).

### **What types of changes can I ask for?**

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

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

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?**

You might be able to negotiate informally with the lender to stop charging interest however, under the Code, the lender is entitled to charge interest throughout a hardship variation. The Victorian Civil and Administrative Tribunal (VCAT) will not make an order stopping interest when hearing a hardship application.

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

The lender and VCAT are not likely to agree to a variation that will extend the period of your loan for too long although what will be accepted will depend on the circumstances. You should also 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. As above, the lender and VCAT are unlikely to agree to a variation where the reduction in payments results in a long extension of the loan period.

### **What type of hardship is covered?**

When you are applying under the Code for a change to your loan due to hardship you must show illness, unemployment or another reasonable cause of hardship. Examples of other reasonable causes could be funeral expenses, loss of assets through natural disaster such as bushfires.



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

### **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 VCAT for an order that the lender must vary the contract.

### **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 66 of the *Consumer Credit Code*. I seek to change the terms of the above contract under s66(2) by: *(specify which of the changes set out in s66(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 2007 postponed so that it is due on 1 January 2008 2007, 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:*



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

(list expenses).

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

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 Victorian Civil & Administrative Tribunal without further notice.

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 VCAT. 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 VCAT**

#### Important

The lender might be about to take action in the Supreme Court or the Magistrates Court against you. You should apply for a hardship variation *before* a lender takes court action against you. If the lender has already sent you court papers, get advice *immediately* as you might need to file documents urgently with the court at the same time as you make a hardship application in VCAT.

Before you apply to VCAT you must have written to the creditor and asked for a hardship variation and been refused. If the lender has not responded to your letter within 2 weeks you can argue that this failure to respond is a refusal to vary.

#### **How much will it cost to apply to VCAT?**

The current fee for a hardship application to VCAT is \$33.30. Contact VCAT or check the VCAT website for changes, VCAT details are in the *Getting Help* section. You can apply to have the fee waived on the grounds of hardship. Ring VCAT or see the "fees" section of the VCAT website for the form to apply for a fee waiver.

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

### **Credit List Application Form 2**

The form you need to complete for a hardship application in VCAT is called a “*Credit List Application Form 2*”. Ring VCAT or see the “application forms” section of the website for the form. VCAT also has a *Debtors Hardship Guide* which contains information on how to make a hardship application. When you get the Form 2 you should:

- tick the box for section 68; and
- tick the box for section 88 if you want to apply to stop enforcement action until after your hardship application is heard.
- describe how you want the loan to be varied in the section headed “Particulars of Claim”.
- if you want enforcement to be stopped you need to add a sentence to the “Particulars of Claim” saying: “I also apply for a stay of enforcement under the relevant provisions of the Consumer Credit Code”.

A financial counsellor might be able to assist you with your application to VCAT. You can also ring the Consumer Action Law Centre if you have questions about applying to VCAT.

### **Do I need to apply for an order to stop the lender from taking enforcement action?**

Applying for a hardship variation will not stop the lender from repossessing and selling a secured car or house while you wait for your hardship hearing. You might need to apply to VCAT for a stay of proceedings, at the same time as you apply for a hardship variation, to stop any action the lender is taking or is considering taking against you. See above for how to apply for a stay of proceedings in VCAT.

There might be other circumstances where it is necessary to stop enforcement action. If you are in doubt apply for a stay of enforcement as well as an order for a hardship variation.

### **What if the lender is taking action against me in another court?**

Sometimes a creditor might have started action against you in the Supreme Court, or another court, to get possession of your house or for an order that you pay the debt. If this happens, you need to get urgent advice. In *some* cases you might be able to get the other court action stopped until a hardship application is considered in VCAT.

Contact Consumer Action Law Centre or one of the other *Getting Help* contacts listed below.



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

### **Applying for an urgent hearing at VCAT**

Sometimes you might need to apply for an urgent VCAT hearing. For example if the creditor threatens to take action, such as repossessing your car or house, before the date set for your hardship application and stay of proceedings application.

To apply for an urgent hearing you should fax or hand deliver your hardship application to VCAT as well as making contact with the Registrar at the Credit List Registry of VCAT to explain that you need an urgent hearing to apply for a stay of enforcement.

### **What if I am not eligible for a hardship variation under the Code?**

The lender might say that your contract is not covered by the Code 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 might be able to argue that the loan is covered by the Code. Get advice from Consumer Action Law Centre or one of the contacts listed below.

If your loan is not covered by the Code you might still be able to negotiate an informal variation with the lender. Consumer Action Law Centre might be able to provide you with a contact at the creditor you can speak to. You might 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](http://www.consumeraction.org.au)

Ph: (03) 9629 6300

Mon . Fri 10am . 5pm

Free telephone advice about consumer law matters.

#### **Victoria Legal Aid:**

Ph: (03) 9269 0120, or 1800 677 402 for country callers.

Mon . Fri 9am . 5pm.

The service is also available in other languages. Ask the information officer when you call. VLA also provides some legal advice and assistance.

#### **Law Institute Dial a Lawyer Information & Referral Service:**

Ph: (03) 9602 5000



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

Mon . Fri, 9am . 5pm

For pre-recorded information and/or referral to a private solicitor in your area.

### **Financial and Consumer Rights Council:**

Ph: (03) 9663 2000, or 1800 134 139 for country callers

For referral to your local financial counsellor to get free advice and information about debts, budgeting and debt recovery procedures.

### **Federation of Community Legal Centres:**

Ph: (03) 9654 2204

To find your local community legal centre, and the services that it provides.

### **Useful information**

#### **Federal Privacy Commissioner:**

Ph: 1300 363 992 (Privacy Hotline)

For information about credit reporting and other privacy issues or to lodge a complaint about credit reporting or another breach of privacy.

#### **Consumer Affairs Victoria:**

Ph: 1300 55 81 81

For general information about consumer rights and responsibilities and referral to a local community support worker. Also provides dispute resolution services and investigates complaints.

#### **Telephone interpreter service:**

Ph: 13 14 50

Available 24 hours, free to callers

#### **Victorian Civil and Administrative Tribunal**

Ph: 9628 9700, or 1800 133 055 for country callers

#### **Insolvency and Trustee Service of Australia**

Ph: (03) 9272 4800

For information about bankruptcy

#### **Industry Dispute Resolution Schemes**

#### **Banking, Insurance and Investment Assistance**

1300 78 08 08



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

A central telephone number to the appropriate scheme, for disputes with banks, insurance companies (claims disputes), credit unions, finance brokers, and investment advisors

### **Energy & Water Ombudsman (Victoria) EWOV**

Ph: 1800 500 509

[www.ewov.com.au](http://www.ewov.com.au)