



What Can I Do When a Debt Collector Calls?

Use this fact sheet if:

- A lender or debt collector has contacted you demanding that you pay a debt.
- You are behind in loan payments and you expect a call from a debt collector.
- A lender or debt collector has threatened you with legal action for a debt.
- Your debt is unsecured (i.e. you don't have a mortgage over your house, car etc). Although some of the information here does apply to secured debts.
- Your debt wasn't for business purposes. Although some of the information here will apply to business debts.

If the lender has a mortgage over your house or car, or if someone else guaranteed your loan, you need to seek advice about your rights.

Can the lender claim full payment if I have only missed one payment?

Once you miss a payment on a loan or credit card etc the lender often has a right to demand payment of the full amount. However, most lenders will not do this if you are only a few payments behind.

If you fall further behind you might receive a call from the lender's debt collection department, or from a debt collection firm that works for the lender. Sometimes the lender will sell the debt to another company, and that company will demand payment from you.

Are there limits on what debt collectors can do?

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.

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)

The guidelines provide that a debt collector should not:

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- enter your home without your permission, or refuse to leave your home on your request;
- tell your family or friends about the debt;
- have you arrested or imprisoned;
- take your household goods unless it has a mortgage over the goods and a court order.

Refer to Fact sheet '*I'm being hassled by a debt collector*' for detailed information about harassment and unfair debt collection practices.

If you are being contacted in relation to an old debt, refer to Fact sheet '*Do I have to pay an old debt?*' for detailed information on whether you have to pay an old debt.

What if I think that I don't owe any money?

Before you make any payments you should check whether you owe the money that is being claimed. Debt collection agencies buy computer-based information about debts. Sometimes the original creditor will have incomplete information on its computer and will mistakenly sell a debt that has previously been paid or settled. Carefully check your records (statements, receipts etc) before you agree to pay any money.

If your records prove that you do not owe money, write to the debt collector stating that you don't owe the money. List the documents you have to show this. If you don't have proof, write to the debt collector and ask for details of their claim and copies of documents that prove you owe the debt.

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Sample letter

Your Name
Your Address

Organisation
Address

Date

Dear (organisation),

Re: Alleged debt

I/We refer to your letter/phone call on (*date*) in which you claimed a debt of (*amount*) was owed.

To assist me/us to obtain advice about your claim please provide the following documents:

1. Copy of contract relating to the alleged debt.
2. Copies of any account statements from (*date*) to (*date*).
3. Details of how the amount of the debt was calculated.

Please forward this information to the above address.

Please note that in requesting the above documents and information, I/we am/are not acknowledging any liability for any amount alleged to be outstanding on the alleged debt.

Yours faithfully,

(*Your Name*)

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For more information on obtaining documents relating to alleged debts refer to our Fact sheet '*How do I get more information about my loan?*'.

!WARNING!

DO NOT make any payment on old debts without reading our Fact sheet *Do I have to pay an old debt?* and getting further advice if required from our telephone advice service (03 9629 6300).

What if I think I have a good reason not to pay?

You might have a defence - a legal reason to argue that you cannot be made to pay – to part or all of the debt.

Some legal defences against debts are:

1. You did not receive the goods or services for which the payment is claimed.
2. The debt was not calculated correctly.
3. You have already paid the debt.
4. Mistaken identity, i.e. it is not you that owes the debt.
5. The debt is statute barred – that is, the debt collector or lender is outside the time provided by the law to sue for the debt, refer to our Fact sheet 2.
6. You were misled about what you were signing.
7. The circumstances surrounding the debt are unjust. For example, a bank has given you credit or increased your credit limit at a time when you could not afford to repay the money, and the bank knew or ought to have known that you could not repay the debt, or not without substantial hardship. **Please note:** To argue that a contract is unjust is a complicated procedure in most cases and you would require assistance to do this. However, if the lender is a member of an external dispute resolution scheme (see below) you might be able to take action yourself.

If you believe one or more of the above defences might apply to you, get further advice from somewhere such as Consumer Action Law Centre's free legal advice line (03 9629 6300). Do not make any payments or accept that you owe the debt until you have received advice.

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If you can't get advice immediately, you should write (remembering to date, sign and keep a copy of the letter) to the debt collector or lender informing them that you are seeking advice and ask them not to commence legal action until you have obtained the advice.

What if I know I owe some money but not as much as they claim?

Write to the debt collector and explain in writing, or on the telephone, the amount you believe you owe. In your letter you should write "*without prejudice*" at the top of the letter, as this usually means the letter cannot be used as evidence that you agreed you owed the money in any court or tribunal.

Ask the debt collector to confirm the amount owing in writing. Don't accept verbal agreement of the lower amount. If the debt collector doesn't agree or won't put it in writing, seek advice.

How do I complain to an Ombudsman, or industry external dispute resolution scheme (EDR)?

If you dispute a debt that relates to a bank, credit union or telecommunications company you should make a complaint to an EDR, such as:

- the Banking and Financial Services Ombudsman (<http://www.bfso.org.au>)
- the Credit Ombudsman (<http://www.creditombudsman.com.au>) or
- the Telecommunications Industry Ombudsman (<http://www.tio.com.au>)

before legal action is taken against you.

The schemes can investigate and help resolve your dispute. In some cases the company can't take legal action against you while your matter is being investigated by the EDR. The schemes usually require that you have tried to resolve the dispute with the relevant bank, credit union or telecommunications company before making a complaint or requesting an investigation.

What if I agree that I owe money & can pay the full amount?

If you have funds available, pay the debt, although you might wish to ask whether the debt collector would accept an amount less than the full amount claimed (see below).

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Use a method of payment that gives you proof of payment, such as a cheque or internet bank transfer. Keep your proof of payment for at least 7 years. Unfortunately, it is possible to be chased for a debt many years after it has been paid.

What if I agree that I owe the money and I can't pay the full amount?

Debt collectors often demand payment of the full amount, or a large lump sum immediately. This is a known collection tactic. If you “stand your ground” and advise them that you cannot pay the full amount, debt collectors usually agree to accept payment by instalments. If you can't pay the full amount, offer an amount that you can afford to pay in regular instalments. Do not offer more than you can afford, as this will make things more difficult in the future.

Can I offer to settle the debt for less?

Sometimes creditors and debt collectors are willing to accept a smaller amount of money as “*full and final settlement of the matter*”. It usually depends on how old the debt is, the difference between what you offer and what you owe and the total amount due. You should get free advice from a financial counselling service if you are unsure of what amount to offer.

You can contact the Financial and Consumer Rights Council on (03) 9663 2000 to request a referral to a financial counselling service near you.

What if I agree that I owe the money but I can't pay anything?

If you are in difficult financial circumstances and you can't pay, you should seek advice from a free financial counselling service about your rights and options. You can contact the Financial and Consumer Rights Council on (03) 9663 2000 to request a referral to a financial counselling service near you.

Remember that a debt collector might not be able to do the things that they are threatening to do. Refer to our Fact Sheet '*I'm being hassled by a debt collector*' on debt collectors & harassment.

What will happen if I do nothing?

A creditor generally has 6 years to chase you for money owed or 15 years if a court judgment has been obtained. If you come into money or assets in the form of income or property during this time the creditor might be able to take this to pay off the debt – but

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only by following a process through the courts. Interest will continue to build up on the debt if you do not pay.

Do I have other options if I cannot pay?

There is a range of options available if you are unable to pay loans. These include informal instalment arrangements, instalment arrangements through the court, formal arrangements under the Bankruptcy Act and filing for bankruptcy.

A free financial counselling service can give you some information about these options. You can contact the Financial and Consumer Rights Council on (03) 9663 2000 to request a referral to a financial counselling service near you.

Will non-payment affect my credit report?

Not everyone has a credit report. However, if you have applied for a loan and/or had a loan you are likely to have one. A credit report is a list of your history with companies and/or organisations that have provided you with credit, including loan applications and defaults. Defaults can be listed on your credit report if you are at least 60 days in arrears, the lender has made a written demand for payment and the lender notified you (at, or before the time you entered into the agreement) that personal information would be given to a credit-reporting agency.

See our Fact Sheet '*How do I change my credit report?*' on making changes to your credit report.

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

Financial and Consumer Rights Council

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

To find your local financial counsellor who can give free advice and assistance with credit and debt problems, negotiating with creditors and budgeting.

<http://www.fcrc.org.au>

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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.

www.consumer.vic.gov.au

Victoria Legal Aid:

Ph: (03) 9269 0234, or 1800 677 402 for country callers.

Mon – Fri 8.45am – 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

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 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

Telecommunications Industry Ombudsman (TIO)

Ph: 1800 062 058

www.tio.com.au

Regulators

They investigate industry conduct & are unlikely to assist with individual complaints.

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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.

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