

## Dealing with Debt Collection

This fact sheet is for information only. You should get professional advice about your personal situation.

### Main ideas

- Creditors and debt collectors are not allowed to harass you. But they can contact you if you get behind in your payments.
- Some creditors hire debt collectors to collect owed money. Or they may sell the debt – the debt collector takes the place of the creditor.
- Check you owe what the debt collector claims you owe.
- Debt collectors must keep to the rules when collecting debts.
- Financial counsellors can help. Their services are free.

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## Creditors or a debt collector may contact you

If you owe someone money you are a debtor. The person or company you owe money to is the creditor.

Debt collectors sometimes chase the debt for the creditor, this means you can negotiate with the debt collector or the creditor.

Other times, the debt collector may 'buy' the debt from the creditor. This 'assigns' the debt to the debt collector, and what is owed, including any interest and collection charges, is then owed to the debt collector. You usually need to negotiate with the debt collector directly, as it can be difficult to convince the creditor to buy the debt back after the debt has been sold.

Sometimes you may be contacted by a solicitor (lawyer) acting for the creditor or debt collector.

If you get behind in your loan repayments, or don't pay a bill on time, somebody will contact you to ask you to pay. They may contact you by phone, SMS, email or letter. There may be threats of legal action if the debt is not paid.

If a creditor or debt collector contacts you:

- Check you remember the debt and the amount claimed is about right. Check your records, or ask for documents. [Use our Dealing with Debt Collection sample letter](#). Do not use this letter [if the debt could be more than 6 years old, use our Debt Collector \(Old Debt\) sample letter](#) instead (see below).
- Check the last time you made a repayment. If it is more than 6 years ago, check if the debt may be too old to collect. [If you are in NSW, see our fact sheet about Recovery of Old Debts](#).
- Find out whether the creditor or debt collector is a member of an external dispute resolution scheme (EDR). [Read our fact sheet about Financial Complaints to AFCA](#).
  - [Most lenders and debt collectors are members of the Australian Financial Complaints Authority \(AFCA\). You can check whether they are on the AFCA website](#) or by calling 1800 931 678.
  - [If the debt was originally a telecommunications debt, complain to the Telecommunications Industry Ombudsman through the website](#) or by calling 1800 062 058.
  - [If the debt was originally an energy or water debt, you can complain to the Energy & Water Ombudsman NSW \(EWON\) on the EWON website](#) or by calling 1800 246 545.

If you are outside NSW, [visit our Useful Links page for who to contact in your state or territory.](#)

## If you think the debt is correct

If you remember the debt or the loan, and you think the amount owed is about right, it is best to talk with the creditor or debt collector.

### You could repay the debt in full

If you have enough money, you can repay the debt in full. Keep a receipt of the payment. Ask for written confirmation you do not owe anything else. Keep these documents in a safe place.

Paying the debt is the best thing to do if you can. It gets rid of the debt, and you won't have to pay added interest and collection costs. But think through the impact of paying a large single lump sum – will you have enough to live on, and enough to repay other debts? Don't let a debt collector talk you into a full payment if you can't afford it.

### You could negotiate a payment arrangement

Don't be afraid to ask for a payment arrangement – creditors and debt collectors often make arrangements for people struggling to pay.

- **Figure out how much you can afford to pay.** Take into account your other debts and living expenses. If you need help, or if you can't afford to make payments that will pay off the debt in a reasonable time, talk to a free financial counsellor by calling the National Debt Helpline on 1800 007 007 or [find your local financial counselling service through the NDH website.](#)
- **Contact the creditor or debt collector** and explain you are in financial hardship. Negotiate an affordable repayment arrangement. Ask to pay at a frequency (fortnightly/monthly) that suits you, perhaps at the same time as your income is paid. A financial counsellor may be able to help with these negotiations, or help work out what you can afford to pay. When negotiating an arrangement for bills like strata levies or energy, make sure it is clear whether your repayment arrangement covers only what is due now (and you still need to find a way to pay future bills), or if it's meant to cover payments on future bills too.
- **Get the arrangement in writing.**
- **Keep to the agreement.** If your situation changes, contact the creditor or debt collector to re-negotiate a new arrangement. It's best to do this before you fall behind on payments.

### **If the creditor or debt collector won't agree to a repayment arrangement:**

- **Keep paying the amount you can afford**, even if the creditor or debt collector says it is not enough.
- **Complain to the appropriate EDR scheme:**
  - [Most lenders and debt collectors are members of AFCA](#). Complain that the creditor or debt collector will not give you a reasonable repayment arrangement. [Read our fact sheet about Financial Hardship](#). AFCA can put in place a repayment arrangement for you, if they think what you are offering is fair. Any collection action stops while AFCA looks into your complaint.
  - [If it is a telecommunications debt, complain to TIO](#).
  - [If it is an energy/water debt, complain to EWON](#) (if you are in NSW). [If you are outside NSW, see our Useful Links page for who to contact in your state or territory](#).
  - You can also keep negotiating with the debt collector directly. Most complaint schemes encourage you and the lender/debt collector to keep communicating and working towards a payment plan.

### **You could offer a smaller lump sum to finalise the debt**

The creditor or debt collector may accept a lump sum less than what you owe to finalise the debt. Each company will have their own policy about what they will accept – they may look at the gap between your offer and the actual debt, how old the debt is and what your financial situation is like. A free financial counsellor can help negotiate a lump sum settlement.

If the debt collector agrees to your lump sum offer, get it in writing. Their acceptance letter should state the amount is in 'full and final settlement of all monies owed'. You must pay the full amount by the due date. Keep copies of the agreement and your receipt in a safe place.

### **You could do nothing**

If you cannot afford to repay the debt, and you have no property that could be sold or income at risk, and you don't expect that situation to change long-term, you may choose to do nothing.

In NSW the creditor/debt collector usually has 6 years to start court action to collect a debt (or 12 years if it's a deed or a mortgage). [For more details read our Recovery of Old Debts fact sheet](#).

But if they do start action in time, and get a NSW court judgment, they have another 12 years to enforce any court judgment they get against you (this can be extended in some cases). If your circumstances change and you get income or property during this time, you

may have to pay the debt **plus** interest and court/legal costs. (Interest can add up to a large amount over many years.) [Read our fact sheet about NSW Local Courts for more information](#), or [visit our Useful Links webpage for services in the state where you live](#).

Before you decide to do nothing, it's a good idea to talk to a free financial counsellor to look at all your options. If your situation is long-term and you cannot pay anything, it may be possible to ask the lender or debt collector to release you from debt entirely (because there's not much point them spending time and money to chase you if there's nothing they can collect from you). There may be other negotiations or ways to try to reduce or settle the debt.

## **You could consider bankruptcy**

If there is no way you can pay all your debts, you could consider bankruptcy. [Read our fact sheet about Bankruptcy – it can be a fresh start, but there are some long-term consequences](#). Make sure you get advice from a free financial counsellor to make sure this option is right for you, and you understand how the consequences can affect you.

Not all debts are covered by bankruptcy. For example, debts from motor vehicle accidents may not be covered, unless the debt has been liquidated first. Get legal advice or speak to a financial counsellor.

## **If you don't think the debt is correct**

You may not think you owe the debt, or the amount is wrong. It may be because:

- You did not receive the goods or services that they want you to pay for.
- You have already paid the debt.
- You are not the debtor (a case of mistaken identity).
- The debt is statute barred – the creditor has not taken action to recover the debt within the time stated by law ([read our fact sheet about Recovery of Old Debts in NSW](#)).
- You were misled about what you were agreeing to (or about the goods or services you bought).
- You were unfairly pressured or forced into a loan – for example, because of family violence or financial abuse ([read our fact sheet about Financial Abuse and Family Violence](#)).
- The creditor gave you a loan that was not suitable, for example because you could not afford it ([read our fact sheet about Responsible Lending](#)).
- The situation or contract was unfair.

## **If you think you have a good reason for not paying all or part of the debt**

- **Get legal advice immediately** – check you have a good case to argue, how you can argue it, and any risks involved.
- Tell the creditor or debt collector why you think you do not owe all or part of the debt.

Tell them you have a dispute, and you want it investigated.

- Ask for copies of all loan documents. [Use our sample letter Dealing with Debt Collection](#) – [but for old debts, only use our Debt Collector \(Old Debts\) sample letter](#) (NSW only, get advice from a legal service if you are outside NSW).
- If you know you owe some of the debt, start making repayments while disputing the rest of the debt. If you think the debt is statute barred, do not pay anything – get legal advice.
- If the debt collector threatens legal action, or refuses to investigate the dispute, or insists you owe the whole debt you should:
  - Lodge a dispute if the debt collector is in an EDR scheme. [Most lenders and debt collectors are members of AFCA](#). [For telco debts, try the TIO](#), or [energy or water debts, EWON in NSW](#).
  - If the debt collector is not in an EDR scheme, you may have to file a defence to court proceedings if the dispute can't be settled by negotiations – get legal advice.

## Things creditors and debt collectors can and cannot do

There are laws stopping debt collectors from acting in an unconscionable (unfair) or misleading way towards you.

There are also guidelines about what is fair debt collection conduct – [you can read the Debt Collection Guideline for Collectors and Creditors in detail on the ACCC website](#).

### Things creditors and debt collectors can do

A creditor or debt collector can contact you about paying a debt you owe. They can generally:

- Ring you a reasonable number of times per week asking you to pay the debt (reasonable means making actual contact up to 3 times a week, or 10 a month, but also depends on the circumstances).
- Tell you they may take legal action against you (if they can do so).
- Tell you that a default may be listed on your credit report (if they can do so). Default listings can be made if a debt is more than 60 days overdue and required notices have been sent. You may also have repayment history information recorded. You will not usually be told when a listing is made, so get a free copy of your credit report. [Read our fact sheet about Credit Reports](#).
- Contact other people (like family) if they need to ask for information about how they can contact you. This usually happens if you are ignoring their attempts to contact you, or if they do not know how to reach you. Make sure the debt collector can reach you on the contact details they have.

### Things creditors and debt collectors cannot do

Generally, a creditor or debt collector cannot:

- Send you to jail, or threaten to send you to jail, just for owing a debt. Get legal advice immediately if you are threatened – you can call our Credit & Debt Legal Advice Line: 1800 844 949.
- Use abusive or threatening language.
- Threaten you with harm.
- Contact you in a way that's designed or likely to wear you down or exhaust you.
- Ring you at unreasonable times such as before 7:30am or after 9pm, or on public holidays.
- Visit your home, unless it is necessary and reasonable. Make sure the debt collector can reach you on the contact details they have, and tell them not to come to your home. Home visits are extremely rare, unless it's a repossession agent seizing a car or other secured assets or property belonging to the lender/lease company – or there has been court action, and a sheriff is involved to repossess items.
- Visit or ring you at your place of work if you have asked them not to, as long as you have given them another address and phone number they can reach you on.
- Tell, or threaten to tell, your employer, neighbours or family about your debts.
- Mislead you about the consequences of not paying, including:
  - Threatening any legal action that isn't available to them
  - Chasing you for a debt they know is statute barred and too old to collect
  - Threaten to take and sell any of your property, unless they have a mortgage or security, or a court order
  - Threaten to garnishee (take) money from your wages without a court order.
  - Send you letters that look like court documents (but are not court documents).
- Contact you directly if you authorised someone else to deal with the situation (for example, a family member, support worker, financial counsellor or solicitor).

## **If you are being harassed by a creditor or debt collector**

Sometimes creditors and debt collectors go beyond what they are legally allowed to do when they demand you pay a debt. This is called debtor harassment.

Even if you are being harassed, you still need to pay the money you owe. But you can complain about creditor or debt collector behaviour.

## **If you have been assaulted, abused, harassed or intimidated – contact the police**

The police may charge the person or help you to take out an apprehended violence order (AVO) against the person.



## Keep a record of all contacts

Every time a debt collector contacts you, write down the time, date, what was said, and the name of the person you talked to. Keep a copy of all written communication and documents.

## Get help

A financial counsellor can help if you are being harassed. They can talk with the creditor or debt collector on your behalf so that you do not need to speak with them directly. A community legal centre may be able to help you write to the creditor, or make a complaint to a consumer protection agency or the police.

## Complain to the creditor or debt collector

Write to the debt collector and ask them to stop harassing you. [You can use our sample letter about Dealing with Debt Collection](#). If you need them to investigate other issues or ask for a payment plan, include that as well. Keep a dated copy of your letter and any reply.

## Complain to an EDR scheme

If the debt collector continues to harass you, you can complain to an EDR scheme (if they are a member). [Check if they are a member on the AFCA website](#).

[If the debt was originally a telecommunications debt, you can complain to TIO through their website](#) or by calling 1800 062 058.

[If the debt was originally an energy or water debt, you can complain to the Energy & Water Ombudsman NSW \(EWON\) on the EWON website](#) or by calling 1800 246 545.

[If you are outside NSW, see our Useful Links page for who to contact in your state or territory](#)

You can ask the EDR scheme for compensation for suffering/ anxiety/ inconvenience as a result of debtor harassment. AFCA can award up to \$5,400 for each claim of non-financial loss (but tends to be quite conservative). TIO can award up to \$1,500 for non-financial loss (but limit doesn't apply to privacy complaints). EWON can award compensation and goodwill payments for frustration/ inconvenience/ upset caused.

Remember that you still also have a debt owing. Make sure you also include any other issues you need resolving, for example, if you don't agree you owe the debt, or the correct amount, or to ask for financial hardship or payment plan.



## Complain to a consumer protection agency

In NSW, debt collectors only need a commercial agent licence if they contact customers in person. If they harass you, their debt collection licence might be revoked or not renewed.

[Complaints about any debt collector conduct \(whether they need a licence or not\) can be lodged with the NSW Office of Fair Trading on their website.](#)

Nationally:

- [If you are being harassed about a consumer loan or credit, complain to the Australian Securities and Investments Commission \(ASIC\).](#)
- [If you are being harassed about the debt that was not a loan \(for example, an unpaid phone bill\), complain to the Australian Competition and Consumer Commission \(ACCC\)](#)
  - The consumer protection agency may not be able to assist you personally if you have been the victim of debtor harassment, but it will provide information about debt collector misconduct. If there are lots of complaints about a particular debt collector, the consumer protection agency may investigate.

## Need more help?

[For a list of other organisations, visit our Useful Links page.](#)

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