



Dealing with debt collectors

Your rights and responsibilities



ASIC's

MONEYSMART

Financial guidance you can trust



About this booklet

This booklet helps you understand:

- ▶ what your legal rights and responsibilities are if you owe a debt
- ▶ where you can get help to work out your budget, negotiate a repayment plan, apply for hardship and better understand your financial and legal options
- ▶ what to do if a debt collector contacts you
- ▶ what debt collectors should not do and what you can do if you have been treated unfairly
- ▶ how to dispute a debt.

About ASIC

The Australian Securities and Investments Commission (ASIC) regulates financial services and financial products.

ASIC's MoneySmart website helps you make smart choices about your personal finances. It offers calculators and tips to give you fast answers to your money questions. Visit moneysmart.gov.au or call ASIC on 1300 300 630.

About the ACCC

The Australian Competition and Consumer Commission (ACCC) is the general competition and consumer protection regulator and is responsible for regulation of goods and services generally. Visit the ACCC's website at acc.gov.au or call the ACCC's Infocentre on 1300 302 502.

Debt collection guideline

The ACCC and ASIC have produced the 'Debt Collection Guideline for Collectors and Creditors' to assist creditors, collectors and debtors to understand their rights and obligations, and to ensure that debt collection activity is consistent with consumer protection laws. You can access the publication at acc.gov.au and asic.gov.au.



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Having trouble with debt?

People can get into debt for many reasons, including losing a job, divorce or separation, getting sick or having an accident. Whatever your situation, if you are struggling to repay your debts, don't be embarrassed to get help.

When you sign the loan or credit contract you make a legal promise to pay back the money that you borrow or pay for the service you sign up for within the agreed time frames. So you should do the best you can to pay the money you owe unless you dispute the debt.

Here's what you can do to get back on track:

- ▶ **Contact your credit provider** - If you can't keep up with payments, talk to your credit provider straight away to discuss a repayment plan. Be realistic about what you can pay and be honest about your situation. Remember to keep a record of these discussions.
- ▶ **Apply for a hardship variation** - Tell your credit provider that you are experiencing financial hardship and why. In the meantime, keep paying as much as you can afford. moneysmart.gov.au has details on how to apply for a hardship variation.
- ▶ **Talk to a financial counsellor** – Financial counsellors provide information and support to people with money problems. They may also negotiate with your creditors on your behalf.
- ▶ **Get free legal help** – Community legal centres and Legal Aid agencies offer free legal advice in every state and territory.

See pages 18 and 20 for financial counselling and legal help contacts.



Case study: Steve struggles to pay his credit card debt

Steve was made redundant. He started looking for work straight away but after 4 months he was still unemployed.

When his savings were gone, Steve started juggling credit cards to pay his bills and mortgage. Steve then took on some part-time work and was confident he would find a full time job soon.



He contacted his credit card company and told them about his situation. The company agreed to temporarily reduce his repayments. This meant Steve was able to afford the minimum monthly payments and avoided paying late fees.

Utility bills

If you're having trouble paying your energy, water or telecommunications bill you can ask to access a retailer's hardship program. You can do this either over the phone or in writing.

Assistance available may include:

- ▶ tailored payment plans based on your ability to pay
- ▶ waiving late fees
- ▶ information to help reduce your bills (if relevant)
- ▶ identifying government concession and rebate programs
- ▶ reviewing your contract to make sure it meets your needs (if relevant).

If you can't agree with your utility provider, you can lodge a dispute with an external dispute resolution scheme. See page 21 for contact details.

What to do when a debt collector contacts you

If you fall behind on your loan, credit card or utility bills and don't contact your provider or respond to them, a debt collector may contact you.

A debt collector could be the original credit or service provider collecting the debt themselves or a debt collection agency acting on the creditor's behalf. Sometimes debts are sold and the debt buyer is the one doing the collecting.

What you should do

If a debt collector contacts you, you should be cooperative but you should also expect to be treated in a professional way.

You should also:

- ▶ be honest about your financial position, including other debts
- ▶ return calls or respond to correspondence promptly
- ▶ agree to a repayment arrangement if you can afford it (see page 15 for more information)
- ▶ tell the debt collector when your contact details (including your address) change.

If you are concerned about the collector's conduct, you can complain. See pages 10-11 for examples of unacceptable behaviour by a debt collector and information about making a complaint.



Important

Are you being taken to court?

If you receive notice that you are being taken to court, get free legal advice about your options as soon as possible. See page 20 for contact details.



How and when debt collectors can contact you

Debt collectors must have a good reason to contact you and should take into account your circumstances and any reasonable requests about how and when you can be contacted.

Unless you request or agree otherwise, contact should be limited to:

In writing or by phone	Face to face	National public holidays
No more than 3 times per week or 10 times per month	No more than once a month	No contact should be made
Weekdays by phone - only between 7.30 am - 9 pm	Weekdays and weekends - only between 9 am - 9 pm	
Weekends by phone - only between 9 am - 9 pm	Should only visit your home if there is no other way to contact you	

Smart tip



Keep a record of any contact

Make sure you keep accurate, complete and up-to-date records of all communication you have with a debt collector. This may include notes of telephone conversations or face-to-face visits.

Ways debt collectors can contact you

Debt collectors can contact you in a variety of ways, for example, via phone, letter, email, social media or by visiting you in person; however they must respect your right to privacy at all times. By law, a debt collector cannot reveal that they are a debt collector or provide information about your financial situation to another person without your permission.

Social media and email

If a debt collector uses email, social media or similar technology to contact you about a debt you owe, they must be reasonably sure that the account is not shared with another person and that their message cannot be viewed by anyone except you.

Face-to-face visits

There is no need for a debt collector to visit you in person if repayment arrangements can be worked out over the phone or by letter or email.

It may be necessary for a debt collector to visit you if you have not responded to other attempts to contact you or if your identity or location is in doubt. If face-to-face contact is necessary, the debt collector should visit you at home during the hours set out in the table on page 7. Visiting you at work should be the last option.

Rules on face-to-face visits

If a debt collector visits you in person, they must:

- ▶ leave immediately if you ask them to
- ▶ treat your family and any third parties with courtesy and respect
- ▶ respect your right to privacy in front of family members and third parties
- ▶ not stay near your home for an extended period or engage in any other conduct that suggests your house is under surveillance
- ▶ not suggest or imply that any third party is liable for the debt when this is untrue
- ▶ not talk to your child (under the age of 18) about the debt (unless you allow this or the child is willing and able to act as a translator or intermediary)
- ▶ not embarrass or distress you or any third party



Debt collectors must have a good reason to contact you

Debt collectors should only contact you when it is necessary. Here are some reasons you can be contacted.

Accounts and payments

- ▶ To provide information about your account
- ▶ To make a demand for payment

Where a payment arrangement is in place:

- ▶ to offer to settle your account or make alternative payment arrangements
- ▶ to review existing payment arrangements after an agreed period.

Consequences

- ▶ To explain the consequences of you not paying, including any legal action the collector or creditor can take.
- ▶ To explain any restrictions to your utilities (for example, disconnection of your electricity or gas supply or restriction of your water supply).

Mortgaged goods

- ▶ To inspect or recover mortgaged goods (if they have a right to do so).

Get explanations

- ▶ To find out why you have not responded to attempts to contact you (if this is the case).
- ▶ To find out why you have not kept to an agreed repayment plan (if this is the case).

Unacceptable behaviour by debt collectors

Here are the things debt collectors are not allowed to do, that are against the law.

Force, trespass or intimidate

A debt collector must not:

- ▶ use or threaten physical force of any kind towards you, any member of your family or people connected with you
- ▶ damage or threaten to damage your property
- ▶ block access to your property or block your way
- ▶ remain on your property when asked to leave, unless they have a Court Order.

Behaviour like this should be reported to the police immediately.

Harassment, verbal abuse or overbearing behaviour

A debt collector must not:

- ▶ shout at or verbally abuse you (including making personal or demeaning comments)
- ▶ use obscene or racist language
- ▶ contact you more than necessary or at unreasonable times (see page 7).

False or misleading statements or deceptive conduct

A debt collector must not:

- ▶ make false statements about the amount you owe
- ▶ make false statements about what will happen if the debt is not paid or what they intend to do (e.g. repossess your car)
- ▶ send letters demanding payment that are designed to look like court documents
- ▶ pretend to be (or to act for) a solicitor, court or government body.



Unfair and/or unconscionable conduct

A debt collector must not take advantage of you:

- ▶ if you are disadvantaged because of illness, disability, age, illiteracy or other circumstances
- ▶ if you are not familiar with the law, the debt recovery process, or the consequences of not paying a debt.

Complaining about a debt collector

If you are being harassed or intimidated by a debt collector, you should make a formal complaint in writing to the collector. See page 22 for a sample email of complaint that you can use or see page 20 for legal advice contacts.

If this does not fix the problem, you should make a complaint to the relevant external dispute resolution scheme.

See page 21 for contact details.

Case study: Sam gets help to stop a debt collector

A debt collector called Sam about an old credit card debt. The debt collector insisted Sam pay off the debt in one payment and said that if he didn't the company would issue a warrant for his arrest and Sam would lose his taxi licence.



Sam was scared that he might lose his job and be arrested, even though it didn't seem possible that he could be arrested over a credit card debt.

Sam went to see a community lawyer who informed Sam of his legal rights and lodged a complaint on Sam's behalf with the collection agency. The lawyer explained that a warrant couldn't be issued for Sam's arrest and his taxi licence couldn't be taken. The lawyer also pointed out that Sam's last credit card payment was made more than 6 years ago and is therefore 'statute-barred', which gives Sam a complete defence to action against him (see page 13 for information about old debts). The collector agreed to cease all further debt collection activity against Sam.

Disputing a debt

If you are sure you owe the debt, you should try to arrange an affordable repayment plan. However, you have a right to dispute a debt if you think it is not yours, or if you disagree with the amount owing.

Ask the debt collector for information about your account and copies of any contracts. If the collector is acting for someone else, they may get the original credit or service provider to send you the documents.

Disputing the amount

If you accept that you owe the debt but disagree with (or are unsure about) the amount claimed, ask for an itemised statement of your account that sets out:

- ▶ the amount and date of the alleged debt
- ▶ how it was calculated
- ▶ details of all payments made and all amounts owing (including principal, interest, fees and charges).

If you have asked for this information the debt collector should stop trying to collect any money until you have received this information.

A default listing on your credit report should not be made during this time. See moneysmart.gov.au for more information about credit reports.

Smart tip



Check the details of your debt

Read any statements carefully. They might include recovery fees or expenses charged by the debt collector. Check whether you have to pay these. For example, did your original contract say anything about these fees or expenses? Get advice if you think the charges or fees are unfair. See page 18 for contact details.



What to do if the debt has been settled

If a debt collector contacts you about a debt you have already paid or settled, explain the situation in writing. Include copies of any documents that prove the debt has been settled.

If the debt collector continues to contact you, make a complaint. See page 21 for information about how to do this.

Old debts

Debt collectors generally have six years to recover a debt. If it is over 6 years (or 3 years in the Northern Territory) since you made a payment on a debt or acknowledged owing the debt in writing, and the debt collector or creditor doesn't have a court judgment about the debt, you have a complete defence against this claim in court. These debts are called statute barred debts.

If a debt collector contacts you about an old debt, do not make a payment or confirm the debt in writing. It is also important that you file a defence in court. See page 20 for legal advice contacts.

Mistaken identity

In cases of mistaken identity, showing your driver's licence or other documents that prove your identity may resolve the situation. However, the decision to show ID is yours – you cannot be forced to do so by a debt collector. If you think someone is using your personal details to run up debts in your name, contact your credit or utility provider immediately.

See moneysmart.gov.au for more information about identity fraud.



Are you responsible for someone else's debt?

You are generally not legally responsible for paying another person's debts – even if that person is your spouse, partner or child.

However, you may be liable if you've agreed to be a co-borrower or guarantor for a loan and the person who took out the loan defaults on their repayments. You may also be responsible for a utility (water, gas or electricity) debt if you are a joint account holder. This may be the case even if you no longer live at the address.

You should get advice if:

- ▶ you agreed to be co-borrower or guarantor under pressure or through fear
- ▶ you did not understand the nature or extent of the commitment you were making.

See page 18 for where you can get advice.

How to dispute a debt

If you want to dispute a debt because you do not owe the amount claimed, only owe part of the amount, or think you have a good reason not to pay the debt:

- ▶ Contact the lender, creditor or utility provider and tell them you dispute the debt. Try to resolve the dispute with the business first.
- ▶ If you can't resolve the issue with the business, see if you are entitled to access a free external dispute resolution (EDR) scheme. See page 21 for more information.
- ▶ If you can't access, or don't come to a resolution with, an EDR scheme, get legal advice. See page 20 for contact details.

If you are in court about the debt, you will need to file documents with the court. You should get legal advice before doing this. You must act immediately to file the necessary documents in the correct way and within the necessary timeframes. If you don't, a judgment may be entered against you.



Negotiating a repayment plan

If you are sure that you are responsible for the debt but will have difficulty repaying it, a debt collector may agree to extend your repayment period (or allow you to make smaller repayments over a longer time). Be prepared to provide information about your financial situation to demonstrate what you can afford to pay.

Sometimes debt collectors will agree to finalise a whole debt if you make a lump sum payment of part of the debt. Do not agree to pay an amount that you cannot afford.

Before you make any payments, make sure it is clear that they will not chase you for any further amount and ask the debt collector to confirm your repayment plan in writing.

Make every effort to keep to a repayment arrangement. However, if you can't pay what you have agreed to, contact the collector again as soon as possible to work out what is a reasonable and manageable amount for you to pay.

Smart tip



Use ASIC's MoneySmart budgeting tool

Use the **budget planner** at moneysmart.gov.au to work out how much you can afford in repayments.

If your repayment plan is rejected

If a creditor or debt collector rejects your payment proposal, put your situation in writing and tell them how much you can afford and how often. If you cannot come to an agreement, consider resolving the matter through a free external dispute resolution scheme. See page 21 for details.

A creditor or debt collector should not insist that you agree to a repayment plan that you cannot afford. Do not be pressured to borrow money from family, friends or a lender. See page 10 for other unacceptable behaviour by debt collectors.

If you cannot make any repayments on a debt you owe, get legal advice. See page 20 for contact details.

Keep good personal records

If you reach an agreement with a debt collector:

- ▶ ask for repayment arrangements to be confirmed in writing
- ▶ confirm arrangements in writing yourself in a letter or email to the debt collector
- ▶ keep receipts or other records of payment (date, amount and method of payment)
- ▶ keep letters or emails you send or receive (include dates on all your communications).

If you are asked to provide documents, photocopy the originals and send the copies to the debt collector.

Keep all your documents together to avoid losing any important information.



Are you being taken to court?

Creditors have the right to start legal proceedings to recover the money you owe – in other words, they can sue you for the debt. If they do, these legal proceedings will be civil rather than criminal, and will have nothing to do with the police or the possibility of jail.

If you owe the debt

If you receive notice that you are being taken to court (such as a summons, statement of claim or liquidated claim) you should check if your dispute can be referred to an external dispute resolution scheme. See page 21 for contact details. You should also get legal advice as soon as possible. See page 20 for legal help contacts.

Don't ignore the notice. If you don't take action, judgment may be entered against you. If that happens, the creditor may be able to enforce the judgment by repossessing your goods to sell and get their money back.

If you dispute the debt

Find out how to dispute a debt on page 12.



Help and advice about your debts

If you are being harassed or intimidated by a debt collector, you can complain in writing to the debt collection company.

If you are not satisfied with their response, you should complain to the company's external dispute resolution scheme.

Here are some useful places to get help or advice.

Financial counselling

Financial counselling is a free service offered by community organisations and community legal centres. They can help you:

- ▶ negotiate with a debt collector
- ▶ get a clear picture of your options
- ▶ work out a budget.

Call the free **National Debt Helpline** on 1800 007 007 from 9.30 am to 4 pm, Monday to Friday (mobile phones may incur a fee) or visit moneysmart.gov.au to find a financial counsellor near you.

Smart tip



Get support if you need it

If you're becoming anxious or depressed about your debts, see a doctor or get help from support services such as Lifeline (call 13 11 14) or Beyond Blue (call 1300 224 636).



Case study: Charlie gets help from a financial counsellor

Charlie had a car accident and was in hospital for nearly 3 months. Because he wasn't working during this time, he was unable to keep up the repayments on his personal loan.

When he fell behind on his payments, his credit provider sold the debt to a collection agency. A debt collector contacted Charlie, threatening legal action if he didn't pay his debt immediately.

Charlie explained his situation and proposed a repayment plan of \$100 a week. The collection agency said they couldn't accept any less than \$200 and were within their rights to demand a higher amount.

Charlie felt he could no longer deal with the situation himself, so he went to see a financial counsellor who contacted the debt collection agency on Charlie's behalf. The financial counsellor was able to negotiate a repayment plan that Charlie could afford.



Important

Debt agreements and bankruptcy

Before you refinance or pay a debt solution company to help you sort out your debts just remember there is free help available from a financial counsellor (see page 18 for contact details). If a debt solution company tells you that going bankrupt or a debt agreement is a good option, make sure you understand if this really is the best option as this has serious long-term consequences for you and your credit rating.

To find out more about debt agreements, personal insolvency agreements or bankruptcy, visit the Australian Financial Security Authority (AFSA) website, afsa.gov.au.

Free legal advice

Community legal centres and Legal Aid agencies offer free legal advice and can help you with disputes and debt recovery through the courts.

Community legal centres

For details of community legal centres across Australia call the National Association of Community Legal Centres on 02 9264 9595 or visit naccl.org.au.

Consumer credit legal service

State	Phone	Website
Australian Capital Territory	02 6257 1788	carefcs.org/consumer-law-centre-act
New South Wales	1800 007 007	financialrights.org.au
Queensland	07 3214 6333	caxton.org.au
Victoria	1300 881 020 or 03 9629 6300	consumeraction.org.au
Western Australia	08 9221 7066	cclswa.org.au

Legal aid

State	Phone	Website
Australian Capital Territory	1300 654 314	legalaid.org.au
New South Wales	1300 888 529 or 02 9219 5000	legalaid.nsw.gov.au
Northern Territory	1800 019 343	ntlac.nt.gov.au
Queensland	1300 651 188	legalaid.qld.gov.au
South Australia	1300 366 424	lsc.sa.gov.au
Tasmania	1300 366 611	legalaid.tas.gov.au
Victoria	1300 792 387 or 03 9269 0120	legalaid.vic.gov.au
Western Australia	1300 650579	legalaid.wa.gov.au



External dispute resolution (EDR) schemes

Nearly all financial services, energy, water and telecommunications businesses belong to an EDR scheme. EDR schemes hear complaints for free and can be a simpler alternative to resolving disputes in court. The business must tell you which scheme it belongs to.

EDR	Phone	Website
Financial services		
Australian Financial Complaints Authority (AFCA)*	1800 931 678	afca.org.au (*AFCA replaced the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO) on 1 November 2018)
Utilities		
Telecommunications Industry Ombudsman Limited	1800 062 058	tio.com.au
Energy and Water Ombudsman Western Australia	1800 754 004	ombudsman.wa.gov.au
Energy and Water Ombudsman NSW	1800 246 545	ewon.com.au
Energy and Water Ombudsman Victoria	1800 500 509	ewov.com.au
Energy and Water Ombudsman Queensland	1800 662 837	ewoq.com.au
Ombudsman for the Northern Territory	1800 806 380	ombudsman.nt.gov.au
Energy and Water Ombudsman South Australia	1800 665 565	ewosa.com.au
Energy Ombudsman Tasmania	1800 001 170	energyombudsman.tas.gov.au
Ombudsman Tasmania (for water)	1800 001 170	ombudsman.tas.gov.au
ACT Civil and Administrative Tribunal	02 6207 1740	acat.act.gov.au

ACCC and ASIC

The ACCC and ASIC administer the Commonwealth laws that protect people from undue harassment and illegal debt collection conduct. You should report unacceptable behaviour that is serious or ongoing to the ACCC or ASIC.

Debts relating to:	Agency	Contact details
Loans, credit cards or other financial services	ASIC	asic.gov.au or 1300 300 630
Phone or utility bills, tradespeople or other service providers	ACCC	acc.gov.au or 1300 302 502

Make a complaint

Use our email to complain in writing about harassment by a debt collector. To download a copy, visit moneysmart.gov.au and search for 'dealing with debt collectors'.

Sample email to complain about harassment

To: <email address>

Subject: Complaint about debt collection practices by (name of collector/ creditor)

Dear Sir/Madam

Account No:

This is a guide only. Always keep a copy of any letters or emails you send. This letter should not be relied upon as legal advice.



I wish to make a complaint about the debt collection practices of (name of creditor or debt collector).

Example 1: A representative (name) of your business has been ringing me very frequently. During the last 4 weeks I have been contacted over 30 times by phone. Some of those phone calls occurred after 9pm.

Example 2: A representative (name) of your business rang my workplace (name of workplace) and spoke to a co worker of mine about the debt I owe you. Your representative asked my co worker for personal details about me including my home address and phone number.

Example 3: A representative (name) of your business rang me on (date). I was told I owed a debt and if I did not pay the debt immediately, my possessions would be seized. I dispute owing the debt. There is no court judgment against me that would allow my possessions to be seized.

Example 4: A representative (name) of your business contacted me on (date) and insisted I get a loan so I can make a lump sum payment to pay off my debt.

This breaches the Australian Consumer and Competition Commission and the Australian Securities and Investments Commission's Debt Collection Guidelines. I request that this harassment stop immediately.

If this behaviour does not stop I reserve the right to take further action as necessary, including making a formal complaint to ASIC and the ACCC and/or an external dispute resolution scheme. I request that all future correspondence about this matter be in writing.

Yours sincerely,

_____ [Full name]

Provide the details of your experience of harassment or other behaviour by the debt collector. Include dates, times, events and names of people involved. See page 10-11 to see what conduct by a debt collector is considered harassment.

Here are some examples of the unacceptable behaviour – insert your own details about what happened.



Contact the Australian Competition and Consumer Commission by visiting acc.gov.au or by phoning **1300 302 502**.

You can also visit the ACCC's Scamwatch website, scamwatch.gov.au, which helps you learn how to recognise, report and protect yourself from scams.



ASIC's MoneySmart website has calculators, tools and tips to help you with:

- ▶ Borrowing and credit
- ▶ Budgeting and saving
- ▶ Scams
- ▶ Superannuation and retirement
- ▶ Insurance

moneysmart.gov.au

Call ASIC: **1300 300 630**

Disclaimer

Please note that this is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

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