



# Debts

Many of us go through a time when we cannot afford to repay money we owe. If you are being asked to pay money which you think you do not owe, you should seek help quickly to protect your rights.

## If I cannot pay my bills, what can I do?

### Step 1

Write down a statement of your financial position. A financial counsellor can help you do this free of charge. To get in touch with a financial counsellor, call 1800 007 007.

Your statement should include:

- money coming in
- money going out for food, rent, clothes, bills, medication, etc
- money owed and things you own

This financial statement will help you and your creditors (those people who you owe money) understand clearly your position.

### Step 2

Once you have listed all your creditors and the amount you owe them, make an offer in writing to pay them an amount each fortnight. Tell them your personal circumstances e.g. sickness, loss of job.

- Don't make an offer you may not be able to keep up
- Your creditor doesn't have to accept any offer you make

If you are experiencing hardship with your personal loan, home loan or credit card, contact your bank quickly to tell them about your situation. If they won't help, you need to get in touch with a financial counsellor by calling 1800 007 007 or call the Legal Helpline 1300 366 424.

## Financial counsellors

A financial counsellor can help you to work out a budget and a statement of your financial circumstances. A statement prepared by a financial counsellor can be useful if you are required to provide proof to the court or a creditor of your ability to pay. They can also assist in negotiating with creditors on your behalf. Their services are free. A list of financial counselling contacts is provided at the end of this factsheet.

## What action can a creditor take?

If you owe someone money you need to be aware of the possible actions they may take against you. They may do any or all of the following:

- make a report to the credit rating agency
- use a debt collection agency to recover the money
- send letters demanding payment
- take court action
- if the debt has already been decided by the court, then the creditor may send you an Investigation Notice before taking further court action to enforce payment.

# Debts

## Debt collectors

Debt collectors are not allowed to call you demanding payment between 9.00 pm and 7.30 am each week day, between 9.00 p and 9.00 am on weekends, and not at all on public holidays. There are strict controls on debts collectors. They must be licensed and they are not allowed to threaten you. If you feel you are being harassed you can make a report to Consumer and Business Services, telephone 131 882.

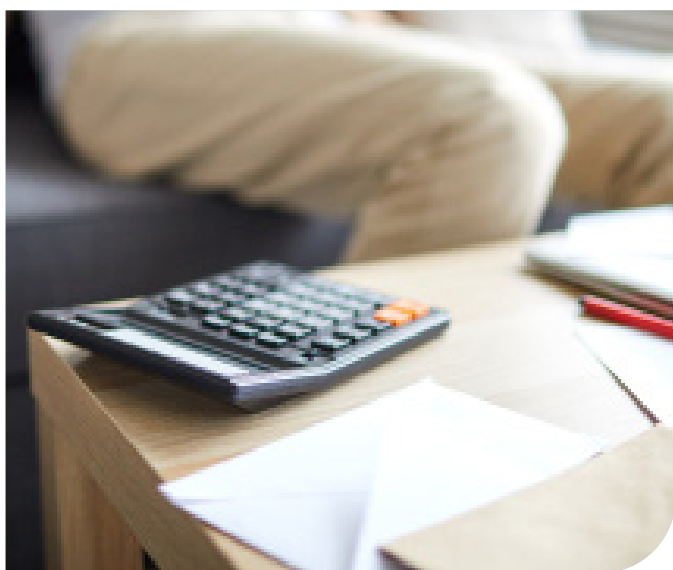
Often debt collectors will include their costs in the amount being recovered. You may not be liable for these costs unless you have agreed to them specifically before incurring the debt (these debt recovery costs may be a condition of a credit card or loan).

## What if we reach an agreement?

Where an agreement is reached about the amount of money owed it is possible to make a court enforceable payment agreement recording the amount owed. It is recommended you see a financial counsellor to make sure that the new payment plan you are about to agree to is realistic in your financial circumstances.

## What if I receive a claim from the Court?

Don't ignore it. Get legal advice. A 'claim' is a court form which says you owe money. If you ignore the claim the Court assumes that you owe the full amount and will make judgment against you. Judgment is the Court's finding that you owe an amount of money.



If you don't agree with the claim or think you don't owe the money you must lodge a defence or a counter-claim within 28 days.

If the matter goes to court, be sure to attend on time otherwise judgment may be decided against you. If you want to negotiate 'out of court', get your creditor's written agreement that no action will be taken against you while you are negotiating and that no court orders will be taken against you. A financial counsellor may be able to help you do this. Even if you cannot pay any money you should contact your creditor because they may decide it is not worth their trouble to chase the debt.

## Will I go to prison?

You cannot be imprisoned for failing to pay your debts. But the Court can imprison you for up to 40 days for disobeying its orders, such as refusing to attend court or refusing to pay if you do have the money.

## What about my credit record?

Even before a matter is taken to court a credit provider can report overdue accounts to a credit rating agency. Court judgments, bankruptcy and credit refusals are also listed on your credit record. If your credit record shows you have defaulted on payments it will be difficult to obtain credit in the future.

## How can they make me pay?

They can still keep pressing you to pay either by letter or through a debt collection agency. Once the matter has been to court and judgment has been decided against you, a creditor has several further ways to make you pay.

The main ways to enforce payment are:

### Investigation Notice or Investigation Summons

A creditor may send you an Investigation Notice. This is a letter notifying you that you are required to answer questions and provide documents about your means to pay a judgment debt within 28 days or more. It may allow you to reach an agreement and avoid further court fees being added to your debt. A creditor may subsequently or alternatively apply to the court to enforce the debt.

If the creditor applies to the court, the court will issue you with an Investigation Summons. This summons brings you to the Magistrates Court to answer questions about how you will pay your debt. Ensure you attend and don't be late or else a warrant may be issued for your arrest.

# Debts

Get a financial counsellor to help you fill in the income and expenditure form which is attached to the investigation notice or investigation summons. You may be pressed to make a large offer each week but do not offer to pay more than you can afford. If you do not make those payments you will be brought back to court under an Examination Summons to explain why you have not paid.

## Taking your goods (Warrant of Sale)

The Court has the power to authorise the seizure and sale of your property (real estate and personal property). This means a sheriff can come to your house and take things to sell to pay your debt. They cannot take anything that would not be taken in bankruptcy, such as household goods, a motor vehicle up to a certain value or tools of your trade up to a certain value. These values change annually and are published on the Australian Financial Security Authority (AFSA) website at [www.afsa.gov.au](http://www.afsa.gov.au).

## Charging Order

A charging order allows the Court to “charge” your property. It does not mean that a creditor will obtain their money immediately, but they will retain a charge over your assets which gives the creditor a legal claim over some or all of the proceeds of the sale of those assets when they are sold.

## Garnishee Order

The Court has the power to make an order that your money held by a third party such as your employer be paid to the creditor. It is possible for the Court to make an order garnishing your salary or wages without your consent. However, your net weekly salary or wages after tax must not be garnished such that you are left with less than 90% of the weekly national minimum wage, and the court must also consider that is it appropriate.

## Bankruptcy

Bankruptcy is a last resort. You can apply to go bankrupt voluntarily or in some circumstances a creditor can apply to make you bankrupt. Bankruptcy will release you from most of your debts and stop creditors from taking

further action. However, you will lose most of your assets, including your home, you may be forced to pay some of your income to the bankruptcy trustee and you may face other restrictions. Some debts will not be wiped off (e.g. child support payments, fines imposed by a court, tax debts and Centrelink debts). You will also find it harder to get credit in the future, even after your finances have recovered. Depending on your circumstances, you may be able to establish a formal Debt Agreement or Personal Insolvency Agreement with your creditors instead of going bankrupt. More information about debt agreements and bankruptcy is available through a financial counsellor and AFSA. It is best to talk to a financial counsellor before taking such a big step.

## Remember

- Get advice as soon as possible
- Put everything in writing
- With careful planning many problems can be avoided
- Don't ignore creditors. Most are understanding and will only press you if you ignore them.

## Getting help

National Debt Helpline

Telephone: 1800 007 007 (free financial counselling)  
[www.ndh.org.au](http://www.ndh.org.au)

South Australian Financial Counselling Association (SAFCA)

A list of financial counsellors is available at [www.safca.info](http://www.safca.info)

Australian Financial Security Authority (AFSA)

Telephone: 1300 364 785

Level 9, 80 King William Street ADELAIDE SA 5000  
[www.afsa.gov.au](http://www.afsa.gov.au)

Legal Services Commission SA

Legal Help Line (free legal advice)

Telephone: 1300 366 424

Consumer Credit Law Centre SA

Telephone: (08) 8202 5960

Country callers: 1300 866 220