

# **SURVIVING DEBT**

a booklet about debt  
for people on  
low to moderate incomes

**A Surviving and Thriving Booklet**





## Acknowledgements

Care Inc. first produced a 'Surviving and Thriving' publication in 1989. Since then the book has undergone four major reviews. It is now a series of booklets on specific subjects. There have been many contributors over the years, too many to mention, but we thank them for their assistance. In particular we thank the volunteers of Care and the Consumer Law Centre for assistance in updating information and providing editing support.

Finally, we thank our clients – your experiences and resilience enrich our lives.

In providing service to our clients, Care Inc. acknowledges the assistance of the following:

- Community Services Program ACT Community Services Directorate
- Commonwealth Financial Counselling Program (CFCP), Department of Families, Housing, Community Services and Indigenous Affairs
- Housing ACT
- ACT Justice and Community Safety Directorate

## About this booklet

This booklet is about debt. It provides information about options that may be available to you if you're in debt. There are also ideas about who to contact for help if you are not able to resolve the situation yourself.

## Why do people contact Care Inc. Financial Counselling Service?

People of all ages and stages in life contact us because:

- They experience a change of circumstances and are no longer able to meet financial commitments.
- They are in debt and not sure what to do or how to negotiate with creditors.
- They need information about financial matters like concessions, rebates, taxation, budgeting.
- They need information on options available to resolve their financial situation.
- They want to look through their budget and see where the money is going.
- They want to talk through the stresses of living on a low or restricted income.
- They want information about their rights e.g. contracts, harassment, financial hardship.



**There is no cost to use our service if you are eligible.**

## What is financial counselling?

A combination of counselling, information about money matters including options for dealing with debts, advocacy or negotiation where appropriate and referral to other services.

We provide telephone information, information appointments and ongoing casework.

Our service is strictly confidential. We do not talk to other people about your matters unless we have your permission. You can speak to the telephone information worker without giving your name if you want to.

## Consumer Law Centre of the ACT

In late 2002, Care was selected as the host agency for the Consumer Law Centre of the ACT (CLC). The CLC was officially opened in January 2003. The CLC offers legal assistance in the area of credit and debt, consumer protection and fair trading. In addition to casework, the CLC advocates and provides policy comment on local, territory and national issues to improve legal protection and raise awareness and understanding of consumers' rights in the ACT.

## Who can use our services?

Anyone can access our Care's telephone and after hours information services.

Only people on a low to moderate income are eligible to use the casework services of Care and the CLC.

## Is there a cost to use our service?

There is no cost to use our service.

## How do I contact Care Inc.?

Ring the information line on 1800 007 007 Monday to Friday 9 am to 4:30pm. The worker on duty will assess your situation to see if Care Inc. is able to help. Care Inc. also hosts the Consumer Law Centre of the ACT (CLC), who are able to provide legal advice in relation to financial matters.



**Don't wait and think it will all go away ... it won't!**



# 1

## Debts

### What is a debt?

A debt is an amount of money that you owe to someone else. There are various types of debt and each will have its own repayment requirements. Many people are able to pay their debts as they fall due, but sometimes people find themselves with a debt that they can't pay on time or even at all.

There are many reasons for being unable to meet debt repayments: job loss, illness, relationship issues, addictions, business failures and over-commitment are just some of the reasons. Not being able to pay a debt is not the same thing as not wanting to pay it. Many people in difficult circumstances still want to pay but just don't have the money.

## Different types of debt

There are many kinds of debt. Some are for 'everyday living', for example:

- Rent and utilities such as electricity, gas and telephone
- School fees and other education costs

There are 'informal debts' where money is owed to:

- Family
- Friends

It's generally easier to negotiate a repayment plan for these debts

Some debts are for loans such as:

- Credit cards that you keep paying back and using again
- Personal loans for cars and other items
- Mortgages paid over a number of years, for things like houses

Some debts are fines such as:

- Parking fines
- Speeding Fines
- Court Fines

There are debts to government departments such as:

- Centrelink for overpayments or advances
- Taxation for amounts of tax outstanding
- Child Support Agency for payments for the care of children

It can be very stressful being in debt, so whether you have one debt or several debts, finding a way to deal with the situation is important.

Before paying any debt, you should be sure that you are legally responsible for it.

If you are over eighteen<sup>1</sup>, and

- were provided with a copy of the contract to take away and get advice about prior to signing
- you understood what you were signing
- you signed willingly and without anyone pressuring you to sign
- the contract is in your name and
- you knew you would have an obligation to repay the debt; then it is most likely you are responsible for the debt.

If you are legally responsible for payment of the amount that you are being asked to pay, then you have an obligation to pay.

If you are not legally responsible for payment of a debt you should not be paying it.

If you have any doubts about whether you are legally responsible for any debt, always seek advice.

If you're unable to pay the amount owing, various suggestions for dealing with this are in this booklet.

<sup>1</sup> a person under 18 may legally enter into a contract to purchase essential goods and services which are reasonably necessary to support him or her. This may include things like medical services, housing or food. Always consult a specialist legal service such as the CLC for advice regarding contracts signed by a person under 18.

Care's information line is open Monday to Friday 9 am to 4:30pm. If you want to discuss your situation please phone 1800 007 007.



**If you have any doubts about whether you are legally responsible for any debt, always seek advice.**

## The National Credit Code

Various legislation may apply to your debt if it is a credit agreement, loan, lease or a hire-purchase contract. This legislation sets down the rights and obligations of credit providers and borrowers. It regulates consumer lending and is designed to protect consumers from unfair lending practices. It covers many different types of credit from personal loans, some mortgages, credit cards, and other consumer lending products.

Depending on when you entered into a contract, if your debt relates to a credit agreement, loan, lease or a hire/purchase contract, the following legislation may apply:

- for contracts entered into before 1 November 1996 – the ACT Credit Act (1985)
- for contracts entered into after 1 November 1996 – the Consumer Credit Code; and
- for contracts entered into after 1 April 2010 – the National Consumer Credit Protection Act (including the National Credit Code)

The National Consumer Credit Protection Act (NCCP) is regulated under Commonwealth legislation and administered by the Australian Securities and Investment Commission (ASIC). This Act provides increased protection for consumers, including:

- For contracts entered from March 2013, you can apply for hardship regardless of the loan amount
- All lenders, brokers, consumer lease providers and debt collectors must hold an Australian Credit Licence. They must also have an internal dispute resolution (IDR) procedure and be members of an ASIC approved external dispute resolution (EDR) scheme
- Strengthened responsible lending obligations, preventing consumers from being in 'unsuitable' credit contracts.

If your debt is covered by the Code and you are in financial difficulty and cannot meet loan repayments, the National Credit Code (and the former Consumer Credit Code) set out a process for getting a 'Hardship Variation'. There is more information on getting a hardship variation in Part Two of this booklet.

If you believe there is something unfair or improper in your loan contract or how it was entered into, seek advice from a financial counsellor or a free legal advice service.

## Nadya

Nadya spoke little English, and could not read English, yet had been signed as a 'co-borrower' on a loan with her son for \$7,500. When her son defaulted on the loan, the finance company pursued Nadya for the outstanding debt.

She was unaware that the finance company had taken a mortgage over her car as security for the loan. Her son's default meant that now Nadya was at risk of losing her car to the finance company.

With assistance from a consumer lawyer, the matter was taken to the ACT Civil and Administrative Tribunal (ACAT).

The Tribunal decided that because Nadya did not understand what she was signing, and did not receive any benefit from the contract, the contract was unjust. As a result, Nadya did not have to pay the loan and got to keep her car.

## Is the loan secured or unsecured?

A secured loan is one where you have given the credit provider rights to take and sell one of your possessions if you default on your loan. Usually a loan will be secured against your home or car with a 'Bill of Sale' or 'Mortgage'.

If your loan is unsecured, the creditor cannot take and sell any of your goods to recover the loan without taking you to court first. It's very important to act quickly if you are getting behind on your loan, especially if the loan is secured.

Regardless of whether your loan is secured or unsecured, if your loan is regulated by the National Credit Code, you should always get a notice informing you of any default and allowing you time (at least one month), to fix or sort out the problem.

## What does a default mean?

If you are in default, it means that you have not been keeping up your regular payments and have fallen behind on the contract. The lenders can demand payment of their money, take court action or repossess the secured goods. The credit provider may also add fees and charges for late payment. Credit providers have an obligation to inform you if you are in default, to give you a chance to catch up.

## Is there insurance on the contract?

Some contracts have insurance on them, so it's important to check if yours does. It may cover your payments for a short time if you are sick or unemployed. If you are not sure whether you have insurance, get some advice from a free legal service or a financial counsellor. You will need to show copies of the contract and other documents you signed.

## Joint debts

If you are a co-borrower or joint borrower with a partner, or other person, you are usually both liable for the whole of the amount borrowed. This is called 'jointly and severally liable'. It means the creditor has the right to collect 100% of the amount owing from either person who signed the contract. You can still be sued even if the other borrower agreed that they would make the repayments on the contract and they don't do so. Co-borrowers and joint borrowers should still receive a notice to warn you about any default and be provided with an opportunity to fix the problem before any collection action starts.

## Guarantors

If you are a guarantor, this means that you have agreed that if the person borrowing the money is unable to pay the debt, you have guaranteed that you will pay the amount owing for them. A guarantor is legally liable to pay the borrower's debt if the borrower stops paying and the credit provider has been unable to recover the money.

It is always best to avoid being a guarantor on a loan, as this type of debt can cause great difficulty between the parties involved particularly during separation or divorce. You should always get appropriate advice to sort out how to proceed if you are a guarantor and are asked to pay a debt. If you are unsure whether you are a co-borrower or guarantor, get legal advice from The Consumer Law Centre of the ACT Ph: (02) 6257 1788.

## Finances after separation

When a couple separates, finances can become a tricky issue. Although in many cases, the situation is resolved without difficulty, there are some areas where problems can arise.

Generally, you can't be held responsible for the debts someone else has incurred, even if you are married or in a de-facto relationship. However you may be responsible for another's debt if you signed a contract:

- as a co-borrower or joint borrower
- as a guarantor

If you have separated you should write to your creditors asking to receive separate notices on any joint debts. This is particularly important if your ex-partner agreed to make payments on a joint loan. If your ex-partner stops making the payments you need your own notification of this default and whether the lender is threatening to take legal action against you to recover the debt.

If you are planning a property settlement, and there are joint debts, be aware that the original contract is binding. This means that the creditor can still recover money from all parties to a contract even if the family court determines that one party is responsible. Currently, even if your partner agrees to 'take over the payments' on a loan that has your name on it, you may still be liable if they stop paying (default)<sup>2</sup>.

<sup>2</sup> The law is currently undergoing changes in this area and you should check with a financial counsellor or consumer lawyer for information about your debts and separation.

Ways to get around this include:

- Get written consent from creditors to release you from the debt
- Have the debt re-financed into the name of the partner most able to make the payments
- Split the debt into two new separate contracts

Be sure to seek appropriate advice regarding any of these options.

## Credit Cards

In the case of credit cards, the principal cardholder is usually liable for the debt. This means that if someone has a card they can use on your account, and you have separated, you need to ask for the card back. Then ask the credit provider for the other person's name to be removed from your account. This means that the other person can no longer use your account. You should insist on confirmation in writing – and keep copies of any letters you send to the credit provider or receive from them. If they won't return the card, cancel the account as soon as possible.

## 'Sexually Transmitted Debt'

If you think that a contract was unfair to you, or you did not understand or agree to it, you may be able to have the contract 're-opened' as being unjust. It may be what is known as a 'sexually transmitted debt' ('STD') or 'relationship debt'.

These types of debt sometimes occur in situations where a person's decision making ability in financial matters might be affected by a relationship with another (e.g. husbands, wives, de-factos, same sex couples).

If you have been left with debts in your name that you did not sign for, or signed under duress, and/or you did not benefit from the contract, then this may be an 'STD'. You should talk to a financial counsellor or consumer credit lawyer to see what options are available to you.

### Sam

Sam is a sole parent with two children who has a debt of \$570 on a credit card. Sam took out the card at the insistence of the then partner. Sam signed the contract at home, while in the middle of a phone call to the vet, and really didn't have time to look through the contract at all. Sam's poodle Percy was very sick at the time and Sam was very worried about him.

Sam's ex-partner was the only person to use the card for a trip and Sam has never got any benefit from the card. Sam appears to have a 'sexually transmitted debt'.

Sam didn't receive proper information or copies of the contract prior to signing and received no benefit from the contract. If you find yourself in a position like Sam's, seek assistance from a specialist such as a financial counsellor or consumer credit lawyer.

You can call Care on 1800 007 007 for more information.

## Unconscionable/Unfair contracts

A court may consider a contract is harsh and unfair 'unconscionable', where there is clear disadvantage to one party. It is sometimes possible to have the disadvantaged person's name removed from the contract and for that person to have no further responsibility for the contract.

The court may consider:

- Whose names are on the contract?
- Were you aware you were signing as co-borrower and not as a 'witness' or referee?
- Did you get to read the contract before signing it?
- Who benefited from the loan?
- Were you too afraid to say no when you signed?
- Who suggested signing the contract?
- Did you understand your obligations when you signed?
- Were you able to take the documents away for a second opinion before signing them?
- Who chose the credit provider?
- Were you asked to get another person to sign as a 'guarantor'?
- Where were you when you signed the documents? Were you at home, at the shop, at the bank?
- Were you distracted in any way while you signed?
- Did you think you had no option but to sign?
- Was there any pressure to sign – physical, emotional or psychological?

## 'Not unsuitable'

When you enter into a loan agreement, you have an obligation to provide complete and correct information. The loan provider, on the other hand, has an obligation to assess your suitability for the loan by 'making reasonable inquiries and taking reasonable steps to verify information' you provide. A loan will be assessed as 'not unsuitable' if, based on the credit provider's assessment of the information you have provided,

1. the loan meets with your goals and objectives, and
2. you are able to repay the loan without undue hardship.

For some types of loans, for example, high cost short-term loans (often referred to as payday loans) the credit provider has additional responsibilities to you. Because these loans (less than \$2,000 for less than 2 years) pose a particular risk to vulnerable consumers, the credit provider must also obtain and consider your bank account statement covering at least the 90 days preceding your loan application as part of its assessment.

In addition, hardship may be presumed, and the loan assessed as unsuitable,

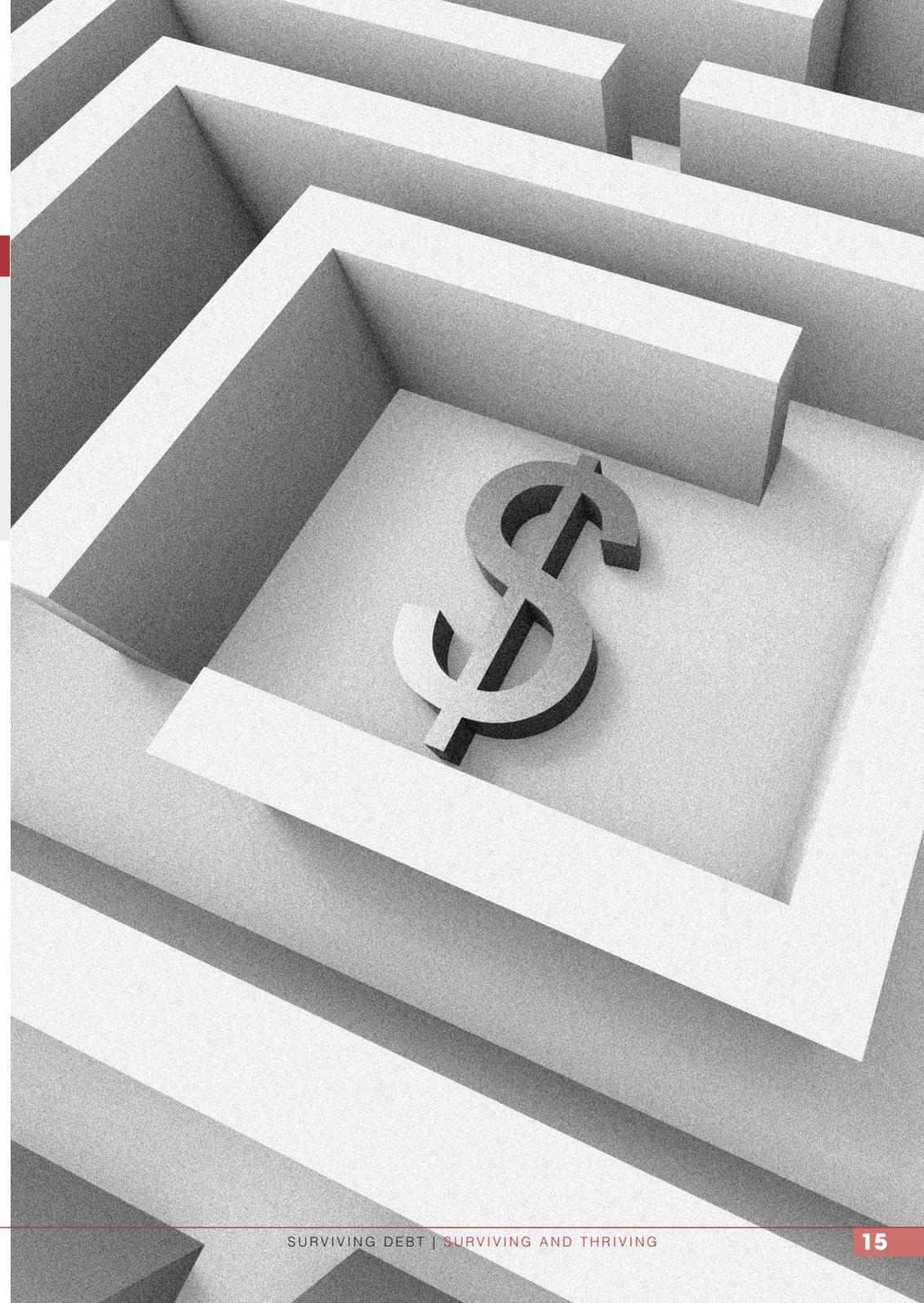
1. if you are in default on another payday loan, or
2. if you have had two or more payday loans in the preceding 90 days.

You should always check with a consumer credit lawyer about your rights if you have ANY concerns about being made to pay as a result of a contract that you did not understand or were made to sign under pressure. Financial institutions are required to take steps to satisfy

themselves that ALL parties to a contract understand the transaction. This means fully explaining the terms, conditions and implications of the transaction or requiring any co-borrower, joint borrower or guarantor to receive independent advice.

### Checklist

- ✓ Is it my debt?
- ✓ What type of debt is it?
- ✓ Is anyone else's name on the contract? Is the contract in default?
- ✓ Is the amount owed correct?
- ✓ If it is a loan, is it secured or unsecured?





## 2

## What Next?

The steps listed below will help you gain control of your debts. Each step is discussed in detail in the pages following:

1. Get a copy of your Credit File (also sometimes called your credit history, credit report or credit reference file).
2. Draw up a summary table of your debts.
3. Read through the 'Ways to deal with debt' section so you are aware of what some of the options are for dealing with debt.
4. Do your budget.
5. Draw up a table detailing the option you have decided on and the amount allocated for each debt.
6. Communicate your intention to the creditors.
7. What if the creditors don't agree?
8. Keep a record of your ongoing payments and balance of each account.
9. Keep a folder with all letters and details of phone calls.

## Your credit file

New laws passed by the Federal Parliament in November 2012 will change the way credit reporting is carried out in Australia.

To date, consumer credit reports in Australia were limited to your identity details, credit enquiries and negative information such as defaults, court judgments and bankruptcies.

However beginning in March 2014, when the new laws come into effect, your credit report could contain much more information that can be viewed by credit providers when you apply for credit. For example:

- Credit account information (e.g. account status, open and/or closed date, credit limit) and credit provider details
- Type of credit and account (e.g. credit card and revolving credit)
- Up to 24 months of repayment history information, including missed payments, starting from December 2012!

### What does this mean for you?

The additional information in your file is meant to show how well you keep up with your credit obligations. If you don't pay your bills on time, credit providers will be able to see that and as a result you may be denied credit.

For more information go to [www.creditsmart.org.au](http://www.creditsmart.org.au)

## What should you do?

First, you should take the time to order a copy of your credit report. Although the new information won't appear on your file until 2014, you should familiarise yourself with the information your file currently contains and check that the information is correct.

Equally important, when deciding how to deal with your debts, the first thing to do is to work out your current financial situation. A copy of your credit file will assist you in this. So, it's a good idea to obtain a copy of your credit file before doing a detailed plan, particularly if you are in serious difficulty with your debts.

You can obtain a free copy of your credit file by writing to Veda Advantage at:

Veda Advantage Public Access Division  
PO Box 966, North Sydney NSW 2059

[www.vedaadvantage.com](http://www.vedaadvantage.com)

You will need to provide the following information:

- Your full name and date of birth
- Driver's Licence Number
- Current residential address and any other addresses in the past 5 years if you have moved
- Current employer's details
- Daytime contact phone number
- The name of the organisation to which you last applied for credit
- Your signature
- Two forms of identification

Once you have a copy of your credit file, check to see that you agree with any debts that are listed and the amounts listed as owing. If you want to dispute a debt or an amount that is listed, contact Veda Advantage to request a 'File Update Form'. Complete and return this, so that the entry on your file can be marked as 'disputed' until you are able to resolve the matter with the credit provider.

For debts where you are behind in payments, some may be listed and others will not be listed, as some companies are quicker to list than others.

### When will a default be listed on my file

A default cannot be recorded until the payment is more than 60 days overdue. From 12 March 2014, the overdue amount must be more than \$150 and you must be notified. Default information can be reported and accessed by both licensed credit providers and those that do not hold an Australian credit licence (such as telecommunications or utility companies).



**Credit reports can be hard to read and understand. If you are having problems talk to a financial counsellor or credit lawyer.**

Don't forget that not all debts are listed on credit files – things like debts to family, friends, debts to government departments or various other types of debt will not appear on your credit file. However, they should be included in any plan that you make for debt repayments or arrangements.

Generally default listings remain on your file for 5 years from the date of listing. If during the 5 year period, you pay an overdue account in full the credit provider

is required by law to amend the listing to show that the account has been paid. So the account remains as listed but paid out on your file until the 5 years has expired. If you have declared yourself bankrupt or been declared bankrupt, this remains listed for 7 years.

### Statute barred debts

Most debts have a limited life expectancy due to limitation periods established by statute in the various states and territories. For debts arising from simple contracts, which include most consumer debts other than mortgages, the limitation period is 6 years running from the date of your last payment. As a result, you may not have to pay an old debt if you made your last payment more than 6 years ago. In this case, the debt may be statute barred—you may have a defence if someone commences legal action against you.

However, it is important that you know your rights with respect to old debts. If a creditor or debt collector contacts you for payment of an old debt, you should seek advice from a financial counsellor or credit lawyer immediately before making any payments. Moreover, you should not make any admissions that you owe the debt until you have got advice. Making a payment or an admission could 're-start' the limitation period!

It's important to have a clear picture of what you owe to ALL creditors before beginning to work out how to deal with the situation. Summarising your debts on paper can sometimes be quite confronting, especially if you have been avoiding thinking about how much money you owe to people, but it's essential to do it. If you don't know what you're doing now and how much debt you've actually got, you won't be able to make decisions about how to change things.

## Debt Summary Table

Once you have all the information about your debts from your credit file and any other places that aren't on the file, you should draw up a 'Debt Summary Table'. The example on the following page that shows the information that should go on this table.

### Instruction for Debt Summary Table

Collect all the information you have about your debts. Under the headings shown on the table, put the relevant information. Record all the information until you have a complete summary of what you owe and who you owe it to. Photocopy the blank table on page 46 for use.

identifying details of account	what type of account e.g. personal loan, credit card, medical bill	amount that should be paid on the account	what is currently being paid (if anything)	the total amount left on the account	how much the account has fallen behind in payments	any item that is secured to the loan, that may be taken and sold if the debt is not paid	anyone else who has signed the contract e.g. a co-borrower or guarantor
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### Debt Summary Table example

Date: .....

name of creditor	account number	account type	interest rate	payment amount due	actual payment	balance of account	arrears	security	name of other person on contract
Bank	000224	personal loan	10%	\$50 per month	\$10 per month	\$3000	\$420	car	none
Power Co.	212121	electricity account	nil	varies	\$0	\$407	\$53	none	none

## Ways to deal with debt

Once you have completed your Debt Summary Table, read through this next section to get an idea of some of the options that may be available to deal with debts.

### Extension of time to pay:

You can ask to extend deadlines for individual payments, or the total time period for all payments.

### Pay by instalments:

If you have not been making any payments on a debt, work out how much you can realistically pay each week/fortnight toward the debt.

- Make sure you leave yourself enough money to pay essential living expenses.
- Write a letter to the creditor offering an affordable repayment. You may want to include a brief overview of your income and expenses showing how much you can afford each pay period. It is also sometimes useful to include a short summary of your circumstances and why you need to pay by instalments.
- Start making payments

### Reduced payments

If it is hard to pay your current payments, work out what you can afford and offer this amount. It is better to offer a small amount and pay regularly than to pay different amounts haphazardly. You need to be sure that you are covering interest charges on the debt or that you

request that the interest be frozen. Any reduction in payment amounts will mean that you will be paying over a longer period.

It may also mean that there are fees or charges incurred. You should be sure to ask about these things when making any arrangement with creditors. Ask the creditor to give up the right to collect any fees or charges.

### Moratorium

This means that you ask for a period (usually 1 to 3 months), of not making any payments on your loan, to give you the chance to catch up on other bills or sort out your financial situation. This might enable you to make payments on essential things like rent, mortgage, electricity or medical bills. You can also ask that no interest be added to your loan during the period of the moratorium.

A moratorium is generally only a short-term solution. This type of arrangement is most likely to get agreement from a creditor when you are experiencing temporary financial hardship, and where there is a likelihood that your circumstances will improve after the moratorium period.

### Forego default/deferral charges

If you have missed a payment or paid late, you may have to pay a fee. When negotiating, ask creditors if they will waive these fees.

## Offer a lump sum

If you have access to a lump sum of money (eg through a compensation payment, inheritance or asset sale), even if it is less than the full amount, the creditor may accept this in lieu of the full amount. You need to be sure the creditor is agreeing to accept the amount in 'full and final settlement' of the debt. It must be clear the creditor gives up the right to collect the remaining amount. This type of arrangement is best made in writing by both you and the creditor. If you are considering offering a lump sum, be sure to seek assistance from a specialist worker, such as a financial counsellor.

## Request a write-off or waiver of the debt

When you cannot make any payments and you have few or no assets and your circumstances are unlikely to change in the foreseeable future, you could request the creditor writes off or waives the debt. Creditors may agree, if it will cost them more than it is worth to pursue the debt, and there is very little likelihood that the debt will be paid.

NOTE: If you want the creditor to give up their legal right to collect the debt, ask for them to waive the debt. This means they can never reactivate the debt and come after you for the money. Write-off can often mean something different—creditors may agree to stop pursuing the debt, but some creditors still claim they can collect the debt if your circumstances change in the future. Any agreement of this type should be confirmed in writing. Sometimes you may need to provide supporting documentation such as a letter from a health professional or welfare worker.

## Hardship variations

*(under section 66 of The Consumer Credit Code and section 72 of the new National Credit Code)*

Part One of this booklet has a brief description of the legislation applicable to consumer contracts and the types of loans that are covered by it. If your loan is covered under this legislation and you are experiencing financial hardship and can't meet loan repayments, you have the right to apply to the lender for a change to the terms of the contract. This type of situation arises most often when someone loses a job, becomes ill, or there is other 'reasonable cause' for the hardship – provided that the debtor reasonably expects to be able to discharge the obligations under the contract if the terms of the contract are changed.

There are three types of changes you can request:

1. You can ask for a reduction in payments for a specified period of time and for the term of your loan to be extended accordingly
2. You can ask to postpone payments to a later date than they are usually due
3. You can ask for a period of time without any payments (a moratorium), e.g. for three or six months, and for the term of your loan to be extended accordingly.

If you make a Hardship Application, the credit provider must, within 21 days after the day of receiving the application, give you a written notice that:

a) states whether or not the credit provider agrees to the change; and

b) if the credit provider does not agree to the change – the notice must state the following information:

- the name of the approved external resolution scheme of which the credit provider is a member; and
- your rights under that scheme; and
- the reasons for not agreeing to the change.

If the credit provider agrees to your Hardship Application, it must set out the details of such change in writing within 30 days of the agreement.

You are entitled to make a Hardship Application even if there is a co-borrower who does not agree or is unable to be contacted.

In order to succeed in applying for a variation, the borrower needs to be able to show that the variation will allow them to pay off the loan, even though it will take a longer time. If there is no evidence that a variation is likely to result in the loan being repaid in the longer term, then the credit provider may refuse the request.

If you think the refusal is unfair, you can lodge a complaint with an approved external resolution scheme of which the credit provider is a member. Some credit providers, like banks, who have signed to the 'Banking Code of Practice' also have other responsibilities to try and help you if you are in hardship.

If you are considering approaching a creditor for any of the above options, contact Care Inc. for information about how best to word your letter or phone call. As everyone's circumstances are different, it is important that the reasons for any request you make accurately reflect your particular situation.

## Pro-rata / consolidation schemes

### Pro-rata payment scheme

A pro-rata payment scheme may be a way to deal with more than one debt. This means offering to repay all creditors proportional amounts in instalments over a given time. In order for a pro-rata scheme to be viable, you must have enough money available after paying essential living costs to divide up amongst the creditors.

The payments are based on a formula that means the creditor that you owe the most money to receives the largest amount. Creditors may accept this type of arrangement, as long as you inform them that you are dealing with all of them in the same way. A pro-rata scheme usually increases total repayment time and may not be accepted if debts are secured.

An example of the pro-rata payment scheme is shown on the following page.

### Debt consolidation

Debt consolidation means that you pay out your existing debts by taking out a new loan. You can only do this if you qualify for a new loan.

The idea behind a consolidation loan is that you end up with lower repayments than your current situation, and with payments you can afford. As with a pro-rata scheme, you will usually have to make payments over a longer period of time.

## example

### pro-rata payment scheme

After doing his budget and accounting for all his basic expenses, Lionel has \$44 surplus left per month.

He has three debts, a newspaper account for \$350, a doctor's bill for \$150 and solicitor's fees for \$320, totalling \$820. To work out how much he can pay from the \$44 towards each debt, Lionel uses the following formula:

Amount of each debt ÷ Total amount of debt x Amount of money available for payments = the amount to be paid on each debt, so:

creditor	debt	total	surplus	monthly payment (rounded to nearest dollar)
milk account	\$350÷	\$820x	\$44=	\$19
doctor's bill	\$150÷	\$820x	\$44=	\$8
solicitor	\$320÷	\$820x	\$44=	\$17
total	\$820			\$44 per month

Lionel then has to write to his creditors with details of his offer. In order to show them he is genuine, he could pay the first instalment on each debt straight away. It will take him just over eighteen months to clear these debts.

## Advantages of a consolidation are:

- May forestall legal action or repossession
- Can give you a breathing space and a plan to get you out of debt over time
- May reduce payments initially though not necessarily in the long term.
- May be less stressful to deal with only one creditor rather than lots of smaller ones

## Disadvantages of a consolidation are:

- Once debts are consolidated repayments stay the same (as individual debts are repaid, payments will decrease and will incur interest with a consolidation loan)
- You may not find it any easier to make regular repayments
- Some original debts may have had no interest (eg debts to relatives)
- The new contract period may be longer and more interest paid over time
- There may be loan establishment fees or other charges (and these can be significant)
- The creditor may secure previously unsecured debts (eg a mortgage over your home)
- You may have less flexibility with all your 'eggs in one basket'
- You may not be eligible for loan consolidation if you're already in debt

**BEWARE!** There are lots of companies now that offer refinancing that is very expensive or even unfair! There are some online calculators that may help you compare costs, if you have access to the internet. The best ones are independent. We recommend looking at calculators developed by the Australian Securities and Investments Commission on its consumer website.

Go to [www.moneysmart.gov.au](http://www.moneysmart.gov.au)

If you do not have access to the internet, or if you are thinking of consolidating your loans and you are unsure of the implications, seek assistance from a financial counsellor to explore any potential savings or costs.

You might also want to work through your debt options or on the financial counselling debt self-help website: [www.debtselphelp.org.au](http://www.debtselphelp.org.au).

## Other ideas

If possible, try to increase your income. Be sure to check how this affects Centrelink or rent payments.

Offer 'in-kind' payments to any relatives or friends you owe money to. You could wash their car, walk their dog or do other tasks to work off money you owe. Be sure to nominate an agreed amount for each task and get an agreement in writing as to how much work is required.

Go through anything you no longer need and organise a garage sale.

## Superannuation

In some situations, if you have superannuation, it may be possible to access part or all of it. There are very specific guidelines that govern access to superannuation and it is best to seek assistance before applying to have your superannuation released. This is a very big decision as the purpose of superannuation is to assist you financially later in life. Superannuation is not released for day-to-day expenses. It is only accessible for financial hardship or on compassionate grounds.

The Australian Prudential Regulation Authority (APRA) can provide information about the circumstances under which people can access their superannuation their superannuation under early release. Go to [www.apra.gov.au](http://www.apra.gov.au).

## Payday Loans

**WARNING:** You may be tempted to borrow additional money from a payday lender to 'catch up' on your debts. While this may seem like a good idea, you must remember that payday loans are very expensive. What's more, it is very easy to fall into an ever deepening cycle of debt. Before you turn to payday loans to solve your debt issues, see a financial counsellor to discuss safer, more sustainable alternatives.

## Before making arrangements on your debt

### Do your budget

If you are going to make offers on your debts you will need to do your budget before contacting creditors to make arrangements as it's important to be realistic when offering repayment amounts.

Refer to Care's 'Budgeting For Life' booklet for information about preparing a budget. If you don't have a copy and would like one, please contact our office. Or you can go to our website [www.carefcs.org](http://www.carefcs.org)



## Debt Payment Table

Once you know how much money you have available, decide what you would like to achieve and by what dates. Make small goals rather than ones that are too big and difficult to achieve. Then record the details on the Debt Payment Table.

### For example

Gasbags Electricity Co. Total Debt Owed \$150. Phone Gasbags to ask about paying this debt off over 3 months. This will mean \$25 per fortnight on the debt. Enter this amount on the Debt Payment Table.

The Debt Payment Table is to put in all the agreements that you make with creditors about how much you are offering to pay and at what rate. This can only be done after you have done your budget and contacted your creditors. An example of a Debt Payment Table is on the following page.

## Tips for communicating with creditors

If you are in debt and having trouble paying always work out how much you can afford before you contact the creditor to discuss a payment arrangement or agreement.

1. Gather as much information as you can before contacting the creditor. Check it's your debt. Is there anyone else's name on the contract? Know your rights as fully as you can. If unsure contact Care or Consumer Law Centre on 1800 007 007.

## Instruction for Debt Payment Table

Work out your budget and what you can offer creditors. Record the amounts agreed to with each creditor.

Record the date that the agreed payments are due. Photocopy the blank table on page 43 for use or you can design your own.

who money is owed to	identifying details of account	what type of account e.g. personal loan, credit card, medical bill	whether creditor has agreed to offer or not	amount to be paid	how often payments are to be made	whether creditor has agreed not to keep adding interest to the account	the total amount that is currently owing on the account
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### Debt Payment Table **example**

Date: .....

name of creditor	account number	account type	payment arrangement	amount of agreed payment	payments due	is interest froze?	current balance
Bank	000224	personal loan	yes	\$45	17th of month	yes	\$3000
Power Co.	212121	electricity account	yes	\$15	fortnightly	no interest	\$407



You would continue to list all debts with their agreements so you have a clear picture of what is due and when.



It's important to accept that debt won't just 'go away'..

2. Always get the name, phone number and position of anyone you speak to about the debt. Check that the person you are talking to can assist you. If not, ask to speak to someone higher up in the company.
3. Take the initiative and approach the creditor by phone, in writing or directly. Explore your options openly. Let them know what you intend to do and seek their support. Ask to be put through to the Hardship Team.
4. Ask what they can do to assist you through any difficulties.
5. If you are nervous about approaching the creditor, write down what you want to discuss, before contacting them.
6. When negotiating, don't take 'no' as the only possible response. Ask to speak to someone higher up. Show that you are flexible by offering workable solutions but don't ever agree to pay more than you know you can afford. It's best to finish the contact if you can't reach agreement and then seek assistance from a financial counsellor.
7. Ask the creditor to put any agreement in writing, if they do not do this, write to them yourself confirming details of any arrangements you made. Be sure to keep a copy of all correspondence.
8. Keep a record of all phone conversations, letters and discussions. This will make it easier for you to show what was said or agreed to on a certain date.
9. Keep creditors up to date. Communicate with them if you can't keep an agreement and see what else may be done.

10. Never lose your temper! If people are rude or aggressive with you, end the call and seek assistance from a financial counsellor.

Some financial institutions will negotiate if you get in reasonably early, show that you are serious, offer payments that you can afford and keep the commitments you make.

## What if the creditors don't agree?

If you're not able to reach an agreement with the creditor(s), then it may assist to have someone like a financial counsellor provide you with support, information or advocacy.

## Tips for getting control of debts

- Know what you owe and who you owe it to
- Have a good workable budget
- Be realistic about amounts you will offer to creditors
- Be persistent and don't give up
- Follow up on any agreement or arrangement you make
- If you can't follow through, contact the creditor to discuss alternatives
- Stay focussed
- Get support or information from a financial counsellor if you can't work things out on your own

## Debt Progress Table

One way to knowing how your debts are progressing is to keep a Debt Progress Table. There is an example of a Debt Progress Table on the following page. This way you will have a record of the reducing balance of each debt and a 'check' against any statements that are sent to you by the companies you owe money to.

It's a good idea to keep the tables you have drawn up in a folder so that you don't lose them. If you need help with the tables, talk to a Care financial counsellor.

### Checklist

- ✓ Is the debt mine?
- ✓ Is the amount correct?
- ✓ I'm having trouble paying!
- ✓ Work out how much I can afford and over what time
- ✓ Contact the creditor in writing and let them know the offer
- ✓ Begin payments
- ✓ Keep records of all payments
- ✓ If I can't keep to the arrangement, let the creditor know straight away
- ✓ Re-negotiate if necessary
- ✓ If I can't resolve difficulties with the creditor, contact Care on 1800 007 007 for other options
- ✓ Keep all correspondence, receipts and account statements

### Instruction for Debt Payment Table

You will need a separate Debt Progress Table for each debt. As each payment is made, record this on the table under the relevant heading.

Photocopy the blank table on page 45 for use or you can design your own.

### Debt Progress Table example

date	name of creditor	balance owing	amount paid	balance owing after payment
17.1.14	bank	\$3000	\$45	\$2955
17.1.14		\$2955	\$45	\$2910



# Debt Payment Table

Date: .....

name of creditor	account number	account type	payment arrangement	amount of agreed payment	payments due	is interest frozen?	current balance





## 3

# Dispute Resolution

As explained earlier in this booklet, under changes to the national consumer credit regime, all lenders, brokers, debt collectors and consumer lease providers must hold an Australian Credit Licence. To obtain such a license a lender, broker, debt collector or consumer lease provider must have an internal dispute resolution (IDR) scheme that complies with ASIC standards and membership of one or more of ASIC approved external dispute resolution schemes (EDR).

### Internal Dispute Resolution (IDR)

Being unable to reach agreement about debts or how to make payment plans are frequent sources of complaints by consumers. If you are having difficulties trying to resolve a dispute with a credit provider, you should approach the decision maker first, asking it to review their decision. It is best to do this in writing, so that you have proof of what was said and agreed. Often disputes can be resolved here without the need for escalation. If you are not satisfied with the response, ask for a referral to the supervisor, manager, or the Internal Dispute Resolution (IDR) section.

## External Dispute Resolution (EDR)

If you have been unable to resolve your dispute through the IDR process, you may progress your matter to the External Dispute Resolution (EDR) process. Currently, there are two schemes formally approved by ASIC, the Financial Ombudsman Service (FOS) and the Credit Ombudsman Service Limited (COSL). Your financial services provider should be a member of at least one of these schemes. EDR schemes provide free, accessible, fair and independent dispute resolution services as an alternative to the traditional court system. They have the advantage of being relatively informal, cost-free and allow for a quicker resolution of your dispute.

### Financial Ombudsman Service (FOS)

FOS cover financial services disputes including banking, credit, loans, general insurance, life insurance, financial planning, investments, stock broking, managed funds and pooled superannuation trusts. Most of the banks and major financial services providers are members of FOS. To find out if a particular lender, broker, debt collector, consumer lease provider or another financial services provider is a member of FOS, and to lodge a complaint, contact FOS: [www.fos.org.au](http://www.fos.org.au) Ph: 1300 780 808

### Credit Ombudsman Service Limited (COSL)

COSL is another EDR scheme approved by ASIC which provides accessible and independent dispute resolution service as an alternative to legal proceedings for resolving complaints with a Member. Members include credit unions and building societies, non-

bank lenders, mortgage and finance brokers, financial planners and a wide range of other financial services and product providers. To find out if a particular credit provider or another financial services provider is a member of COSL, and to lodge a complaint, contact COSL: [www.cosl.com.au](http://www.cosl.com.au) Ph: 1800 138 422

## Dealing with debt collectors

A debt collector may become involved in the process if you have been unable to reach agreement to pay your debts with the original creditor.

Some companies employ their own debt collection agents; others sell debts to debt collectors, or buy out companies that then seek to recover the money from the original debtor. It's important to be sure that anyone who says they are collecting a debt from you can prove you owe the money.

If you do owe money claimed by a debt collector and you are able to reach agreement about the debt and how much you can afford to pay, then providing you stick to the arrangement, you should be able to deal with a debt collector as you would deal with any other creditor. If you cannot keep to your agreed repayment plan, let the debt collector know so that other options can be discussed.

If you think you will struggle to make a payment, it is always better to communicate before the payment is missed. If you are pursued by a debt collector and you disagree that you owe the money, speak to a financial counsellor or free legal advice service.

Debt collectors are required to comply with the Debt Collector's Guidelines established by the ACCC and ASIC. For more information, visit [www.asic.gov.au](http://www.asic.gov.au) or call ASIC on 1300 300 630 or ACCC on 1300 302 502.

## Harassment

Some debt collectors use harassment as a way to intimidate people into paying money. Harassment can be broadly described as 'the use of unfair tactics in an attempt to coerce payment of a debt'. Debt collectors are not allowed to intimidate, force, pressure or badger you into making payments. Discuss your situation with a financial counsellor if any of the following applies to you.

- Deception: A debt collector sends you a letter that looks like a legal letter/summons
- Breaches of Privacy: a debt collector discusses your debt with relatives, neighbours or employers without your direct, written permission
- Fear: A debt collector writes aggressive letters or makes verbal threats about what will happen if you don't pay
- Badgering: a debt collector makes persistent phone calls or calls late at night or early in the morning.

## Bankruptcy

This section only contains very general information about bankruptcy.

Because the Bankruptcy Act is complex, you should consult a financial counsellor by calling 1800 007 007 or the Australian Financial Security Authority, (AFSA) for more detailed information about bankruptcy.

Go to [www.afsa.gov.au](http://www.afsa.gov.au), or phone 1300 364 785

Bankruptcy usually occurs when you have exhausted other avenues and you cannot pay your debts.

You hand over the running of your financial affairs to a 'trustee'. The trustee can be a private, registered trustee or someone employed by AFSA.

AFSA maintains a register of bankruptcies known as the **National Personal Insolvency Index (NPII)**, which is available for access by the public. Your creditors must deal with your trustee. People on low incomes who have little or no assets usually lodge their bankruptcies with AFSA. This is usually free of charge, whereas a private trustee will charge a fee for their services. AFSA is entitled to investigate the reasons for bankruptcy and will sometimes take action where a person has acted in an improper manner that has resulted in bankruptcy.



**Bankruptcy is a serious matter and should only ever be a last resort. Unlike credit reports, information on the National Personal Insolvency Index remains there for life!**

Bankruptcy is a serious matter and should only ever be a last resort. Consider it very carefully and always seek advice about the effect bankruptcy may have on your situation.

When you become bankrupt, unsecured creditors can no longer take any action against you for debts that are owed to them and included in the bankruptcy. Secured creditors may take their secured goods (eg a car secured to their loan) but cannot pursue you for any outstanding balance after the secured goods are sold.

There are two ways to become bankrupt:

1. Voluntary Bankruptcy: when you choose to go bankrupt yourself. You fill in a 'Statement of Affairs' which is a document containing all details of your financial position. The 'Statement of Affairs' is then lodged with AFSA where there is usually no fee or a private trustee, where you will be charged a fee for filing.
2. Forced Bankruptcy: when your creditor(s) force you to go bankrupt by taking out a 'Creditor's Petition'. Creditors must show that you owe a minimum of \$5,000. More than one creditor can agree on a joint petition together if they are owed \$5,000 or more. Generally creditors are more likely to try other forms of debt recovery, as a creditor's petition takes time and money, but they may use it if they have not been able to collect their money any other way.

Once you are bankrupt, trustees may take and sell certain property to pay your creditors. The sort of property that might be taken includes your house (if you own one or are paying it off), land, jewellery (not usually

including engagement and wedding rings), antiques, motor vehicles (worth more than \$7,350), stocks and shares, and gifts and legacies under a will.

Items protected under bankruptcy, which cannot be taken or sold, include:

- Necessary household furniture and personal items
- Property held in trust for another person
- Tools of trade to the value of \$3,600
- Some compensation payments
- A car worth less than \$7,350
- Superannuation

These amounts are valid as of October 2013 and are indexed every 6 months. Please check the AFSA website [www.afsa.gov.au](http://www.afsa.gov.au) or phone AFSA 1300 634 785 for the latest amounts.

## Period of bankruptcy

Bankruptcy usually lasts for three years. The main way to finish a bankruptcy early is to pay all your debts and any trustee's fees and charges.

There are some ways to have a bankruptcy annulled (this means that the bankruptcy is wiped completely as though it had not occurred), but this is complex, and the request must be heard in the Federal Court.

During the bankruptcy you will only have to make payments to your creditors if you earn more than the amounts prescribed in the bankruptcy law. Currently

you can earn \$51,560.60<sup>3</sup>(after tax) if you have no dependants, before you have to make contributions. The amount is indexed and different levels apply if you have dependants. Only amounts above the threshold are considered by the trustee and even then, only a percentage of the above threshold income is taken.



**Not all debts are covered (or 'provable') in a bankruptcy and you should be sure to check with ITSA, a consumer credit lawyer or a financial counsellor to see whether your debts are covered.**

At the end of the three year period of bankruptcy, the debts no longer exist and you are released from payment. Although bankruptcy is a serious matter and should not be entered into without exploring all the available alternatives first, it can provide relief from ongoing debt pressure and a fresh start for people who need it.

3 Valid as of October 2013. These amounts are indexed every six months. Please check the AFSA website or ring AFSA for the latest amounts.

## Other ways to deal with creditors under bankruptcy law

The following ways of dealing with creditors, avoid formal bankruptcy, but are still 'acts of bankruptcy', and they are noted on the National Personal Insolvency Index. They require either some assets or an ability to pay back creditors with the trustee acting as a buffer between you and the creditors.

### Part IX agreement

This is an alternative to bankruptcy for moderate income earners with low levels of debt and little or no property. A Part IX Agreement means that people may agree to pay only part of a debt instead of the full amount owing.

A number of companies that advertise debt relief services 'sell' Part IX services. Proceed with caution, and make sure that you seek advice from another source first!

### Part X arrangement

This may be suitable if you have a reasonable amount of assets to be sold and the money distributed amongst creditors.

There are three variations to Part X Arrangements:

**Composition:** a creditor agrees to accept a reduced amount as payment to clear your debts, eg 30c in the dollar. The balance of the debt is then waived.

**Deed of Assignment:** a trustee sells all of your property, except for limited items, and creditors are paid from the proceeds.

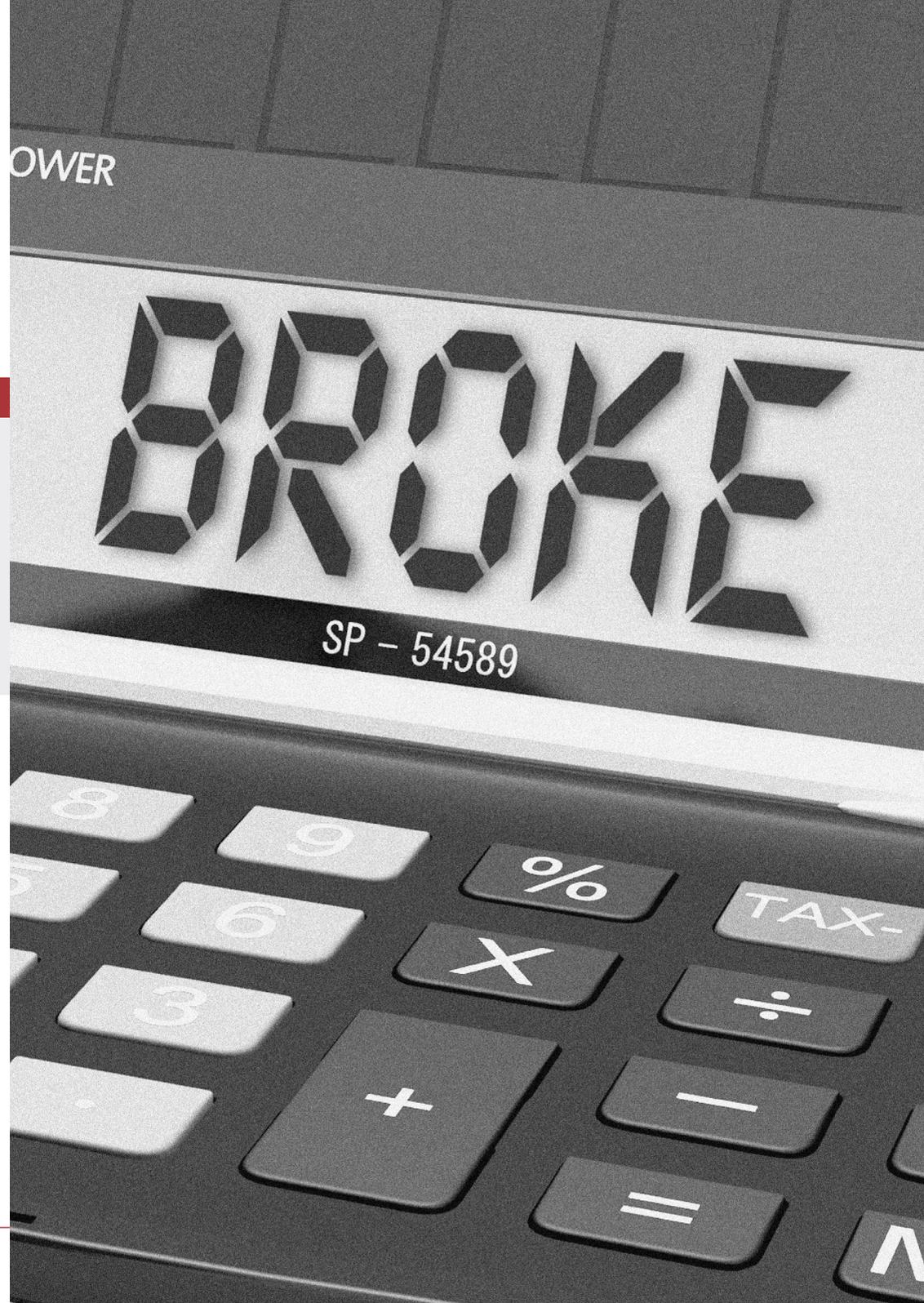
**Deed of Arrangement:** creditors give you an agreed time to pay, in part or in full.

These arrangements become a registered document with ITSA but avoid actual bankruptcy.

**Bankruptcy is a BIG decision. It's important to get more detailed information from a financial counsellor or AFSA before you make any decision about whether to go bankrupt or not.**

#### Checklist

- ✓ Always try to resolve disputes with the financial institution first.
- ✓ There are external dispute resolution schemes if you can't resolve things.
- ✓ Harassment by debt collectors is NOT allowed!
- ✓ Bankruptcy is a last resort, and should only be undertaken after being fully informed about all your options.





## 4 Other Debts

### Taxation (ATO)

If you have incurred a tax debt and you can't pay it by the due date, you will need to contact the Australian Taxation Office (ATO) to make arrangements to repay it either by instalments or in a lump sum. The ATO imposes an interest charge for late payment; this is called the General Interest Charge (GIC).

You may be able to arrange extra time to pay and it may be possible to get a waiver of interest or penalties if you are in serious financial hardship. If you miss a payment without notifying the ATO, you will be contacted soon after the due date, and your debt may be referred to an external collection agency.

In some circumstances, if you are experiencing extreme hardship, you can apply for a release from taxation. This is a complex process and you should always seek assistance, as this request is not granted often.

You can also ask the ATO about restructuring educational debts from the government such as Higher Education Loan Programme (HELP) (previously HECS) and Student Financial Supplement Scheme (SFSS) debts.

If you have entered into a payment agreement with the ATO and you are not able to meet the payments as they fall due, contact the ATO straight away to see what alternative arrangements may be made.

If you are not satisfied with the way the ATO deals with you or you want to discuss your rights, tell the tax officer you are dealing with, or ask to speak to their manager. If things cannot be resolved, you can contact the ATO Complaints Service

Phone on 1800 199 010, or by lodging an online form available on the ATO website.

Finally, if you are still not satisfied, you can contact the Commonwealth Ombudsman to seek independent review or to make a complaint. See the details at the end of this section on how to contact the ombudsman.

Contacting the ATO:

Phone 13 28 61 for personal tax issues,  
or visit [www.ato.gov.au](http://www.ato.gov.au).

## Centrelink and Department of Veteran's Affairs (DVA)

If you have received a notice stating that you owe Centrelink or DVA money and you think the notice is incorrect, contact the person whose name is on the

letter (the original decision maker), to ask that the decision be reconsidered. You may be able to come to an agreement about the level of debt (if any) and a repayment schedule you can afford. Centrelink can recover social security overpayments by deducting amounts from your future payments. If this causes you hardship, you can negotiate to pay over time or reduce the amount of each repayment. In rare cases, the debt may be waived or written off, either in part or whole. If you are having difficulty paying any Centrelink debt, contact Care Inc. to discuss your situation.

If you don't agree with the debt and want to proceed with an appeal, it's a good idea to get some advice from a specialist agency that can assist you to check the authenticity of the debt and provide information about your options. The Welfare Rights and Legal Centre (WRLC) provide advice on Centrelink and Social Security matters.

Visit the WRLC website at [www.welfarerightsact.org](http://www.welfarerightsact.org) or phone (02) 6218 7900.

There are several levels of appeal for disputing Centrelink debts. If your initial approach to the original decision-maker was unsuccessful, you can ask for an Authorised Review Officer (ARO) to review the decision.

If the appeal to the ARO is not successful, you may appeal to the Social Security Appeals Tribunal (SSAT). The SSAT may confirm, vary or set aside any previous decisions.

If an appeal to the SSAT is not successful, your last option is to appeal to the Administrative Appeals Tribunal (AAT). Always make sure you are fully informed about your rights prior to any appeal.

## Child Support: Department of Human Services (DHS)

Parents are considered responsible for supporting their children whether they were married, in a de-facto relationship or never lived together. When a relationship breaks down, there is an obligation on both parties to contribute to the care of their children. In most cases, the children remain with one parent for the majority of the time and spend some time with the other parent. The parent who has the children the majority of time usually receives money, for the expenses associated with bringing up the children, from the other parent. The parent paying child support is the payer and usually does not have custody of the children. The parent who receives the child support payments on behalf of any children is the payee. Child support is paid for expenses incurred in bringing up children and is received for this use by the carer parent. The formula used to work out how much child support must be paid takes into account each parent's income, the number of children, set living expenses of the parents and the living arrangements of the children.

If you receive more than the base rate of Family Tax Benefit, Centrelink requires that you apply for a child support assessment by the Department of Human Services (DHS). If you do not register with the DHS, Centrelink may reduce your benefits.

However, you can agree to private arrangements for child support if you are receiving only the base rate of Family Tax Benefit. This is called 'self-administration'. If you and your ex-partner cannot agree on child support amounts, you can apply for the DHS to assess both your incomes and organise a payment method.

The DHS can enforce payment of child support by the parent assessed as liable for payment. Usually an amount will be deducted from the liable parent's wages. If the liable parent is self-employed, an amount has to be paid to the DHS for forwarding to the carer parent.

If the liable parent does not pay, money can be recovered by garnishee from wages or bank accounts, examining financial affairs under oath, having the sheriff seize goods or through bankruptcy.

If you have problems with either paying or receiving child support, or you disagree with an assessed amount, contact the DHS to discuss the issue.

To find out more about child support, phone the DHS Child Support general enquiries number is 13 12 72 (Monday – Friday, 8:30AM – 4:45PM), or visit [www.humanservices.gov.au/customer/dhs/child-support](http://www.humanservices.gov.au/customer/dhs/child-support).

## Rates

ACT rates are levies that the government charges property owners, so that it can provide funding for services to the community. If you can't pay your rates by the due date, you become liable for interest, charged and compounding on a monthly basis, on any amount that remains unpaid.

### Rates hardship assistance

People suffering substantial financial hardship, and who are unable to pay their rates by the due date may apply for deferment of all or part of their rates. A relatively low rate of simple interest is charged on deferred rates.

## Rates rebate

Property owners who receive a Centrelink pension with entitlement to a Pensioner Concession Card, or a War Veteran's Pension, may be eligible for a rebate of up to 50% of their rates or a maximum rate\* for 'new' pensioners on their principal place of residence on land rates and on water and sewerage supply charges. The rebate does not apply to water consumption charges.

Pensioners in receipt of a rates rebate prior to 1 July 1997 are not affected by the \$365<sup>4</sup> cap and maintain their level of concession until such time as they cease to be an eligible pensioner.

Contact the ACT Revenue Office to discuss rates by phoning (02) 6207 0049.

## Rental debts

### Housing ACT (HACT)

Tenants are responsible for the regular payment of rental for their HACT property. If you are having difficulty paying your rent, it's important to contact HACT straight away to work out how to resolve the situation. Don't just wait for HACT to contact you, always try and deal with any debt or arrears as quickly as possible. Many arrears or debt situations can be resolved reasonably quickly, so communicating with HACT about why you are behind in rent and how you will make up the arrears are important steps. HACT

4 Amount is reviewed annually.

usually asks tenants with arrears to pay an additional amount on a fortnightly basis, as well as their normal rent, to pay off any arrears over time. You'll need to work out your budget first so you know what amount is affordable for you. If you need some help to work out how much you can afford, contact Care Inc. to talk to a financial counsellor. If you make an agreement with HACT it's important that you stick to it, and if you can't, recontact HACT to discuss the situation.

Find out more by phoning HACT's general phone number on 13 34 27, or visiting their website at [www.communityservicesact.gov.au/hcs](http://www.communityservicesact.gov.au/hcs).

## Eviction

Resolving housing arrears is vital, as there is ultimately the risk of eviction if you can't fix the problem.

Before you can be evicted, all landlords, including private landlords and HACT, have to take certain steps. There is information about eviction and other housing topics on the Welfare Rights and Legal Centre website and also on The Tenants' Union ACT Inc. website:

Welfare Rights and Legal Centre  
[www.welfarerightsact.org](http://www.welfarerightsact.org)  
Ph: (02) 6218 7900

Tenants' Union ACT Inc.  
[www.tenantsact.org.au](http://www.tenantsact.org.au)  
Ph: (02) 6247 2011 (between 10AM and 11:30AM,  
Monday – Friday)

## Private rental (non-government)

As with government rental, the key to resolving any debt or arrears in private rental is to contact the landlord or agent who you pay the rent to, to explain how you propose to make up any arrears as soon as possible. You'll need to have done your budget so you know how much to offer and keep to any agreement.

## Traffic fines and parking fines

When a traffic infringement notice is issued, it will be for speeding, unregistered vehicles, negligent driving or other related traffic offences. Traffic infringements don't include parking fines. These are dealt with in the next section.

If you get a traffic infringement, you have 28 days to either:

- Pay the fine; or
- Request extra time to pay the fine; or
- Dispute the notice; or
- Request extra time to dispute the notice; or
- Apply for a withdrawal of the notice

If you are going to ask for extra time to pay, make sure you have done your budget to see how much you can afford each fortnight. You will also need to explain in writing why you are requesting an extension of time to pay. For more information about these options:

Go to [www.police.act.gov.au](http://www.police.act.gov.au) to find information about road and traffic matters. Ph: (02) 6256 7777



**It is very important to seek some free legal advice about your options.**

## Parking fines

If you get a parking infringement notice you have 28 days to either:

- Pay the full amount; or
- Dispute the notice in writing; or
- Apply for an extension of time to pay the fine

You can download forms to dispute the notice or apply for an extension of time to pay from the Rego ACT website: [www.regoact.gov.au](http://www.regoact.gov.au). If you don't do any of these things, a reminder notice plus an administrative charge will be issued. If payment of the original fine plus the administrative fee is not paid, the Road Transport Authority can commence action to suspend your driver's licence or vehicle registration.

As both disputed traffic infringements and disputed parking fines are referred to the Magistrates Court, it is very important to seek some free legal advice about your options.

Legal Aid runs a Legal Advice and Information Line from 9am to 4pm weekdays and can be contacted on 1300 654 314. Go to [www.legalaid.canberra.net.au](http://www.legalaid.canberra.net.au)

## Work and Development Program

Alternatively, you can try to reduce infringement debt by completing a Work and Development Program (WDP). WDPs involve the completing of community work or personal development courses to reduce the amount of infringement debt owed. You may be eligible to take part in a WDP depending on your financial, health, or living situation. For more information on WDPs, visit the Rego ACT website, or call (02) 6207 8754.

If you get either a traffic or parking fine, don't delay in doing something about it! If you need legal advice, act quickly and if you need assistance to work out how you can afford to pay off the fine, contact a financial counsellor.

## Ombudsmen contact details

If you think that the actions and/or decisions of any Australian government agencies are wrong, unjust, unlawful or discriminatory, you can contact the Commonwealth Ombudsman. The Ombudsman's office is independent of government departments and it has the power to investigate and make decisions about complaints it receives.

The ACT Ombudsman has the power to investigate ACT government agencies to see if actions and/or decisions are wrong, unjust, unlawful or discriminatory.

The phone number for both the Commonwealth Ombudsman and the ACT Ombudsman is 1300 362 072. Go to [www.ombudsman.gov.au](http://www.ombudsman.gov.au) for the Commonwealth Ombudsman and for the ACT Ombudsman, go to [ombudsman.act.gov.au](http://ombudsman.act.gov.au).

## Electricity and gas

If you are having difficulty paying your electricity or gas account, contact the utility straight away, to make an arrangement to pay off the outstanding amount over time. Before contacting the utility, work out the amount you are able to offer, and always keep a record of any conversation you have with the utility's staff.

Utility concessions are available for some holders of pension or health care cards. Check with your provider to see if you qualify for a concession.

All utility companies are required to have a hardship program and assist customers who are unable to pay their bill in full. ACTEW's hardship program is called Staying Connected.

To access this call 1300 138 574, or visit [actewagl.com.au/stayingconnected](http://actewagl.com.au/stayingconnected).

## Energy and Water Assistance

### **ACT Civil and Administrative Tribunal – Energy and Water (ACAT-EW)**

If you are having trouble paying your electricity, gas or water account or have a disconnection warning notice, first try to make an arrangement with the utility to settle the account. If you are unable to make an arrangement with the provider, and disconnection would cause you or your household substantial hardship, you can make a hardship complaint to the ACT Civil and Administrative Tribunal—Energy and Water (ACAT-EW), against the utility.

The ACAT-EW has the power to direct the utility to continue supply to your premises if it agrees that disconnection would cause you or your household substantial hardship. Generally the ACAT-EW will expect you to meet some or all of the following conditions such as:

- You are to pay your account by instalments set at an amount you can afford to pay;
- You are to pay all of your account by a specified date;
- You are to enter into an arrangement to have deductions from your bank account or Centrelink payment;
- Any other condition that the ACAT-EW may consider appropriate in your circumstances.

The ACAT-EW can also order your utility to discharge part or all of your account, including any interest or fee incurred.

All utility companies are required to have a hardship program to assist customers who are unable to pay their bill in full. ACTEW's hardship is called Staying Connected. To access this program call 1300 138 574 or visit their website on [actewagl.com.au/stayingconnected](http://actewagl.com.au/stayingconnected)

## Water and sewerage

The ACAT-EW may also assist if you have been warned of possible supply restriction because your water and sewerage rates are unpaid and you have been unable to make an arrangement with the supplier. Contact the ACAT-EW Registrar Ph: (02) 6207 7740. Go to [www.acat.act.gov.au](http://www.acat.act.gov.au) for more information.

## Telephone

### Landlines and mobiles

Once you have checked your bill to be sure it's accurate, if you are having difficulty paying, contact the telephone company to ask for an extension of time to pay. The sooner you contact the company, the more likely it is that you will be able to reach an agreement to prevent disconnection.

You can dispute the amount asked for in the bill and telecommunications companies are supposed to have processes to deal with these complaints. If you cannot resolve your problems you can contact the Telecommunication Industry Ombudsman (TIO).

Telecommunication Industry Ombudsman  
[www.tio.com.au](http://www.tio.com.au) for more information or to lodge a complaint.  
Ph: 1800 062 058

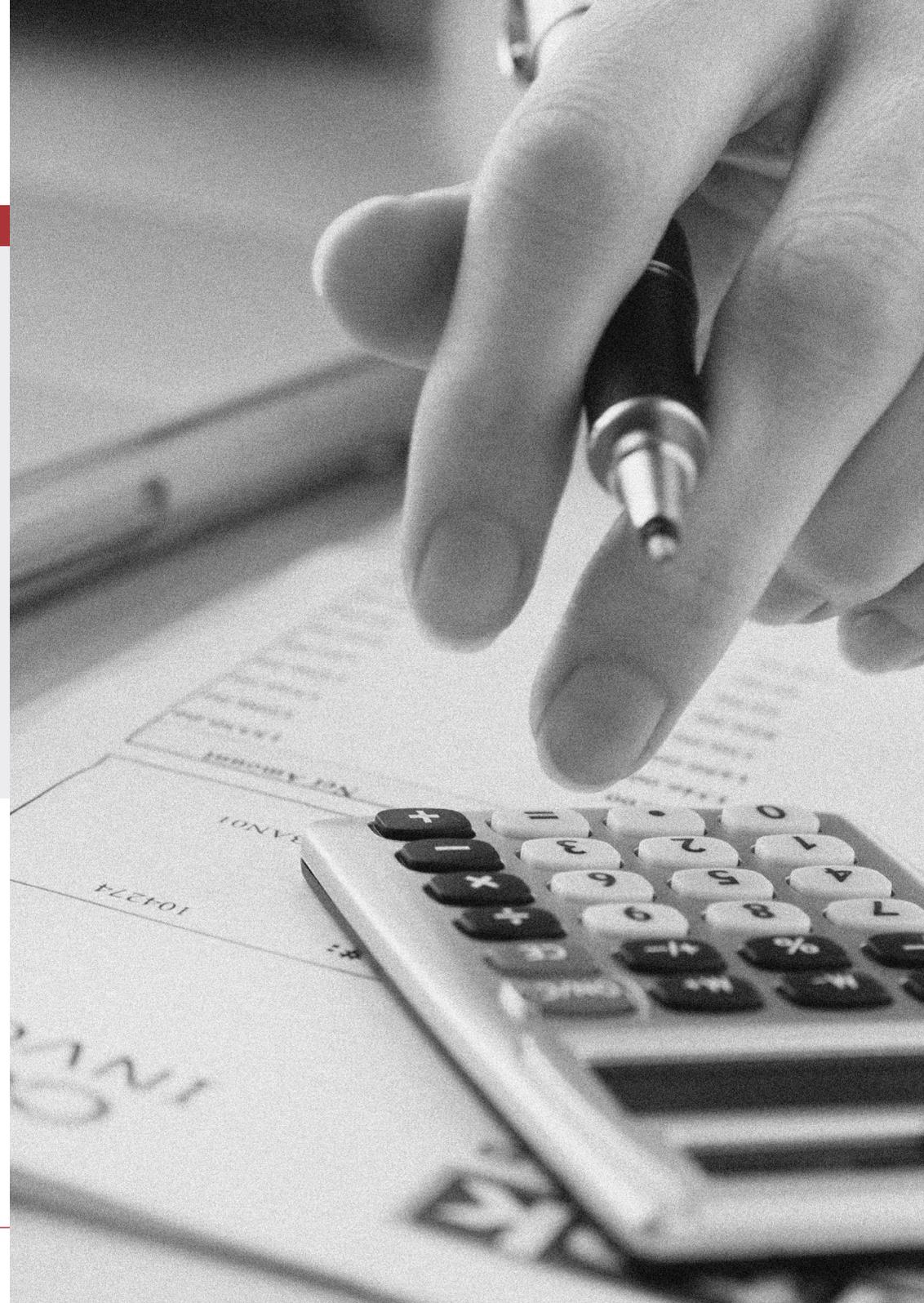
If you have a life threatening illness, or a disability, be sure to tell your telephone company. They are required to have specific processes to deal with your needs.

Similarly, illness, unemployment or changed circumstances can result in inability to pay a mobile phone contract. As there are often fees and charges if a contract is broken, in such circumstances it is best to seek the advice of a financial counsellor or lawyer who specialises in this area of credit. Some mobile phone contracts are now covered by The National Credit Code and this affords a person more protection than in the past. Contact Care if you are in difficulty with a mobile phone contract.

Concessions are available on telephone and internet services for holders of some government pension or health care cards. Contact your provider to check your eligibility.

### Checklist

- ✓ If you agree that you owe a debt to a government or other agency, do your budget, work out what you can afford to pay, and make an offer.
- ✓ Try first to resolve any disputes with the agency.
- ✓ If you can't resolve a dispute, contact a community service with expertise in the area you are having problems with, for information or advice.
- ✓ If you still can't resolve things you can contact the Ombudsman.
- ✓ Always try to get things sorted out as soon as you can; the earlier you deal with a problem, the easier it should be to get a resolution.
- ✓ Keep records of all conversations and keep all letters and other documents..





## 5 Debt Recovery through the ACT Courts

### Courts and Tribunals in the ACT

If you are unable to negotiate a payment arrangement with your creditor and your loan is unsecured, the creditor can seek to recover the money by taking you to court. If the loan is secured, the creditor can also get permission from the court to sell the security and can recover any amount still outstanding after the sale.

Following is a brief outline of how the court process operates in regard to debts and what you and the creditor can do when matters go to court.

This is NOT a complete guide to how debt recovery works. It covers in broad terms how creditors may legally seek to recover their debts. If you need more detailed information, speak to one of Care's financial counsellors or the Consumer Law Centre of ACT on 1800 007 007 or (02) 6257 1788. The staff at courts and tribunals may also help you with information about how they operate. Visit [www.courts.act.gov.au](http://www.courts.act.gov.au) or phone (02) 6217 4444.

## ACT Civil and Administrative Tribunal

The ACT Civil and Administrative Tribunal (ACAT) deals with claims up to \$10,000. The ACAT was formerly called the 'Small Claims Court'. The ACAT is less formal than other ACT courts. Apart from fees and out of pocket expenses, legal costs cannot be recovered from the unsuccessful party. The staff at the ACAT can help you fill in forms and assist you with information about the tribunal's procedures. They will not, however, give you legal advice. People can be represented by lawyers in the ACAT, however the ACAT has been designed specifically to cater for unrepresented people. Before the matter is heard, the ACAT will schedule a conference between the parties to try and see whether you can come to an agreement without the need for a hearing. This is an opportunity for parties to negotiate with an independent third party present.

As well as assistance from the tribunal's staff, you can get information about the tribunal from a financial counsellor or solicitor.

If you receive a claim from a creditor through the ACAT then it is crucial that you speak to a financial counsellor or solicitor immediately as you only have 28 days to respond before the other person can automatically get judgment in their favour.

## Magistrates Court

The Magistrates Court deals with claims of over \$10,000 but less than \$250,000.

People appearing in the Magistrates Court are often represented by lawyers. Most commercial debt

recovery for amounts over \$10,000 takes place here, and if a party is unsuccessful they can be ordered to pay the legal costs of the other party in taking the matter to court.

## ACT Supreme Court

Where the sum sought is over \$250,000, the matter must be dealt with in the Supreme Court. The Supreme Court also has the power to make orders in relation to land. You will probably need legal representation if you are dealing with a matter in the ACT Supreme Court. Initiating or defending matters in the Supreme Court can be very expensive.

If you receive a claim from a creditor through the Magistrates Court or Supreme Court, it is crucial that you speak to a financial counsellor or consumer credit lawyer immediately to get information about what you can do. You only have 28 days to respond before the creditor can automatically get judgment in their favour.

## The court process

### Letter of demand/default notice

Before taking any court action, a creditor may send a letter asking you to pay your debt. If your loan is covered by the National Credit Code, no legal action can start until 28 days after a letter of demand or 'Default Notice' has been sent to you.

The letter must say how much you owe and what your rights are. At this point you can still try to negotiate

with your creditor to come to an agreement without the matter going to court. The further a case gets into the legal system, the more complicated it becomes and the more likely it is that you will need the advice of a legal professional.

## Start of debt recovery in court

Debt recovery proceedings should start in the state or territory where the contract relating to the debt was signed. Although proceedings may commence in a more convenient jurisdiction for the creditor, you can challenge this. If a claim that starts in another state or territory is served on you in the ACT, it must have attached a notice outlining how you can question where the matter should be heard.

## Statement of Claim

If you do not answer a letter of demand or default notice, your creditor may take legal action by lodging a claim with a court or tribunal. The claim is called:

- An 'Originating Claim' in the Supreme Court or Magistrates Court; and
- A 'Debt Application' or a 'Civil Dispute Application' in ACAT.

The claim details:

- who is claiming the amount (the 'plaintiff' or 'applicant')
- who they are claiming owes the amount (the 'defendant' or 'respondent')
- the nature of the debt

- how much is owed.

It also indicates the court or tribunal in which the claim was issued and is stamped by the court.

The claim has to be given, or 'served', on the person named as the defendant or respondent by being:

- handed to them ('personal service');
- handed to a person who appears to be over 16 at the home address, or last known place of residence, or place of business, of the person named as the respondent or defendant; or
- in some cases the claim may be served by post or possibly even by email or social media.

## What happens now that I've received a claim from a court or tribunal?

You only have a few days (usually 28 days) to act, when you receive a claim.

If you agree that you owe the money, you still have the option of trying to negotiate with your creditor directly and come to an agreement about how the debt will be paid. Make sure any agreement is put in writing. In most cases, this should prevent the matter being taken any further in a court or tribunal.

You can also fill out and lodge forms with the court acknowledging that you owe the money, which will mean that the creditor gets judgment in their favour automatically. Before you do this though, it is best to talk with a financial counsellor or legal practitioner. One advantage to confessing that you owe the debt is that it reduces the amount of work the creditor has to do and should result in less costs being passed on to you.

However you should only admit to a debt (or part of a debt) if you actually agree that you owe the money.

## Applying to pay a debt by instalments

If judgment is entered against you by the court or tribunal, you can ask the court to let you pay the debt in instalments. It is important to do your budget before making any offer on a debt. See Care Inc.'s booklet called *Budgeting for Life* for information on how to do a budget, or call us to speak to a financial counsellor.



**It's important to do your budget before making any offer on a debt. See Care's Inc.'s 'Budgeting for Life' booklet for how to do a budget or call us to speak to a financial counsellor.**

The court will consider your offer to pay the debt in instalments and can accept the offer if it is reasonable, and you have the capacity to pay each instalment. If the court accepts your offer to pay in instalments, the creditor may, in certain circumstances, be able to apply to the court to amend, suspend or set aside the order.

## Defending the claim

If you're thinking of defending a claim, it is important to get legal advice. Even if you do not appoint a solicitor to act for you in the proceedings, it is important that your defence accurately set out why you are contesting the claim. You can call the Consumer Law Centre of ACT on 6257 1788. There is also a list of legal advice services at the end of this booklet.

You may defend all or part of a claim by lodging forms with the court or tribunal. In ACAT, the relevant form is called a 'Response'. In the Magistrates and Supreme Court, you must lodge two sets of forms; a 'Notice of Intention to Respond' and a 'Defence'.

Reasons that you might defend a claim include:

- you don't believe you owe the money;
- the amount the creditor says you owe is incorrect;
- you are not the person named in the contract or guarantee;
- the contract has unfair terms;
- the limitation period for collecting the debt has expired.

You might also defend a claim on the basis that a variation to the payments to accommodate your hardship was unreasonably refused or ignored. If this is the case, it is important to talk to a financial counsellor or consumer credit lawyer before filing a defence.

You may also want to make a counter-claim against the other party, for example, if the goods you received were defective. A fee applies for filing a counter-claim. If you can't afford the fee, ask whether you can apply to have it waived.

## What if I do nothing?

If you do nothing within 28 days of receiving the claim, your creditor may apply for a 'default judgment'. After judgment, the creditor is referred to as a 'judgment creditor' and you are referred to as a 'judgment debtor' and you are liable to pay the 'judgment debt'. A default judgment is enforceable for 12 years.

If you do not appear, the court can make an order to prepare a warrant for your arrest. You are advised in writing and given 14 days to attend court. If you do not, the warrant is then issued.

## Enforcement by the creditor

If your offer to pay by instalments is not accepted, or you do nothing, then the creditor may begin 'enforcement proceedings' against you. You will need to provide financial information such as your income, assets and bank account details to the court. This financial information can help the creditor to decide whether they should proceed to recover their debt and, if so, what enforcement action to take.

## Oral examination

If you don't provide written financial information to the court, then you may be ordered to appear before the court for an interview to answer questions about your financial circumstances. This is called an 'oral examination'.

The interview normally takes place outside the courtroom with a representative of the creditor (often a solicitor) and the judgment debtor. Sometimes a court staff member will also be involved.

You will be asked questions about your income and expenses, assets and liabilities, so bring along any information relevant to your financial affairs, including a completed budget. If you need assistance to prepare your budget contact Care.

You will have to answer questions but you do not have to make any offers to pay at this stage.



**If you do not appear, the court can make an order to prepare a warrant for your arrest. You are advised in writing and given a limited timeframe in which to attend court before the warrant will be issued.**

## Earnings Redirection Order

Your creditor can obtain a court order requiring your employer to deduct money from your wages over time to recover the debt. Deductions will continue as long as the order lasts, which is usually until the entire debt has been repaid. This is an 'Earnings Redirection Order'. The effect of such an order can be disastrous as you often do not get any warning, and only find out when you receive your next reduced pay packet! You may apply to revoke or vary the order on the grounds of hardship. Alternatively, you could apply to pay by instalments. However, remember that the order continues while your application is being dealt with.

An Earnings Redirection Order will not affect you if your only source of income is a social security payment.

Special rules exist for making a claim against the wages of Commonwealth Public Servants. If this affects you, talk to your pay officer to find out which rules apply to your circumstances.

## Centrelink payments

An Earnings Redirection Order is not available for Centrelink payments except where the debt is for an overpayment to Centrelink.

However, once a Centrelink payment has been paid into your account it becomes part of the customer's funds. It is therefore possible for a creditor to take payments from your account. However an amount called a 'saved amount' cannot be taken. The saved amount is equal to the following:

- your total Centrelink payment, including advances, paid into the account in the 4 week period immediately before the order, minus
- the total amount withdrawn from the account in the same period.

If a judgment creditor is trying to garnish your bank account and you get Centrelink benefits, you should get legal advice.

## Seizure and Sale Order: The Sheriff

A 'Seizure and Sale Order' authorises a court staff member, called the 'sheriff' in the ACT to visit your home, take certain goods owned by you, and sell them to cover the amount of the debt.

Certain property cannot be taken even if there is a 'Seizure and Sale Order'. This includes clothing, tools of the trade up to a certain value, bedroom and kitchen furniture, and property not owned by you, for example, furniture on hire-purchase or lease.

The sheriff will come to your house and leave a calling card if you are not home. You will have the option to arrange a meeting, usually within 14 days, to discuss your options. Sheriffs do not usually take anything on the first visit. You can apply to the court to pay by instalments and for any further action to be put on hold (this is called a 'Stay of Proceedings'). If your offer to pay by instalments is accepted but you default on a payment the order can be re-executed and the full amount payable.

The court may recover from you an application fee for the order and any cost to them of selling your goods.



**If you receive any notice that says legal action is pending or occurring, always get advice. It helps to know what your rights are!**

## Summary

The ACT Civil and Administrative Tribunal (ACAT) deals with claims up to \$10,000 and is less formal than the Magistrates Court or the Supreme Court.

The Magistrates Court deals with claims up to \$250,000.

The Supreme Court deals with those matters that are over \$250,000.

The court process includes:

- a letter of demand/default notice
- a claim issued from a court or tribunal

Act quickly if you get a claim from a court or tribunal!

Work out whether to 'pay by instalments', 'defend the claim' or do nothing.

If your offer to 'pay by instalments' is accepted, make sure you keep to the agreement.

The creditor can enforce judgment if your offer to pay by instalments is not accepted.

The creditor may ask you to come to an 'Oral Examination' to find out about your financial circumstances.

The creditor may apply to get some of your wages by an 'Earnings Redirection Order' or the sheriff may be authorised to come to your home and take certain goods owned by you to pay the debt.

## Some useful contact details

### **Care Inc. Financial Counselling Service and the Consumer Law Centre of the ACT**

Ph (02) 6257 1788

Web [www.carefcs.org](http://www.carefcs.org)

### **ACT Civil and Administrative Tribunal (ACAT)**

Ph (02) 6207 1740

Ph (02) 6207 7740 (Energy and Water)

Web [www.acat.act.gov.au](http://www.acat.act.gov.au)

### **ACT Magistrate's Court**

Ph (02) 6207 1709

Web [www.courts.act.gov.au](http://www.courts.act.gov.au)

### **ACT Revenue Office (Rates and Land Tax)**

Ph (02) 6207 0049 (Rates)

or (02) 6207 0047 (Land Tax)

### **Australian Taxation Office (ATO)**

Ph 13 28 61 (Personal Tax )

Ph 13 28 70 (Complaints)

Web [www.ato.gov.au](http://www.ato.gov.au)

### **Child Support Agency**

Ph 13 12 72

Web [www.humanservices.gov.au/customers/dhs/child-support](http://www.humanservices.gov.au/customers/dhs/child-support)

### **Credit Ombudsman Service Limited (COSL)**

Ph 1800 138 422

Web [www.cosl.com.au](http://www.cosl.com.au)

### **Financial Ombudsman Service (FOS)**

Ph 1300 780 808

Web [www.fos.org.au](http://www.fos.org.au)

## **Department of Human Services**

<http://www.humanservices.gov.au/customer/themes/families>

## **Housing ACT**

Ph 13 34 27

Web [www.dhcs.act.gov.au](http://www.dhcs.act.gov.au)

## **Insolvency Trustee Service Australia**

Ph 1300 364 785

Web [www.itsa.gov.au](http://www.itsa.gov.au)

## **Insurance Ombudsman Service Limited**

Ph 1300 78 08 08

Web [www.insuranceombudsman.com.au](http://www.insuranceombudsman.com.au)

## **Superannuation Complaints Tribunal**

Ph 1300 884 114

Web [www.sct.gov.au](http://www.sct.gov.au)

## **Tenants' Union ACT Inc**

Ph (02) 6247 2011

Web [www.tenantsact.org.au](http://www.tenantsact.org.au)

## **Telecommunication Industry Ombudsman**

Ph 1800 062 058

Web [www.tio.com.au](http://www.tio.com.au)

## **Traffic Fines (ACT Police)**

Ph (02) 6223 3000

Web [www.afp.gov.au](http://www.afp.gov.au)

## **Welfare Rights and Legal Centre**

Ph (02) 6247 2177

Web [www.welfarerightsact.org](http://www.welfarerightsact.org)

This booklet provides general information available at the time of printing and does not constitute financial counselling or legal advice.