



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 119

How do I deal with debt collectors?

This factsheet contains information on:

- when, where and why you can be contacted about a debt
- what sort of behaviour by debt collectors is unacceptable

What are my rights and obligations?

A **debt collector** is a person who collects debts in the course of a business. This could be:

- a creditor collecting a debt themselves (this includes ‘assignees’—people or businesses who have been sold or ‘assigned’ a debt by the original creditor), or
- someone acting on behalf of the creditor (such as an independent collection agency).

If a debt collector contacts you, be polite and cooperative. In turn, you should expect to be treated in a **professional manner**.

Excessive or unreasonable contact by a debt collector may be unlawful.

When, where and why can you be contacted about a debt?

A debt collector should only contact you when it is necessary to do so and when the contact is made for a **reasonable purpose**. A reasonable purpose includes:

- making a demand for payment
- making arrangements for repayment
- finding out why an agreed repayment plan has not been met
- reviewing a repayment plan after an agreed period of time
- inspecting or recovering mortgaged goods (if they have a right to do so).

As a guide, if contact is necessary (unless you request or agree otherwise) it should be limited to:

- a maximum of three phone calls or letters per week (or 10 per month)
- phone or personal contact only between the hours of 7:30am—9:00pm on weekdays and 9:00am—9:00pm on weekends,
- no contact on national public holidays.

Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Generally, visits to your home (or another agreed location) should only occur if there is no other way the debt collector can make effective contact with you, or if you ask for (or agree to) a visit. If repayment arrangements can be worked out over the phone or by letter, then face-to-face contact should not be necessary.

As a guide, any personal visits should be limited to once per fortnight and take place between 9:00am and 9:00pm (unless you ask for a different time).

A debt collector should not visit you at your workplace unless you request them to, or if you haven't given them any other effective way to contact you. If a debt collector does contact you at work, they must not reveal information about your financial situation to others.

What is unacceptable behaviour by debt collectors?

The types of conduct set out below are likely to breach the law. If this happens to you, you should make a complaint immediately (see page 4 for details of how to do this).

Extreme conduct—force, trespass, intimidation

If you are confronted by extreme conduct, report it to the police immediately.

Debt collectors must not:

- use or threaten force of any kind towards you, any member of your family or any other person connected with you
- damage or threaten to damage your property
- block access to your property, or block your way
- enter your property when you have refused permission, or fail to leave when you ask them to.

Unreasonable contact—harassment, verbal abuse, overbearing manner

Debt collectors must not:

- shout at you or abuse you
- use obscene or racist language
- make personal or demeaning comments.

You may want to report this type of conduct to the police as well.

Debt collectors must not:

- contact you more frequently than necessary or at unreasonable times—for example, it is unacceptable to keep phoning you without a break, or to contact you late at night or at other unreasonable times, as a way of demoralising or exhausting you
- make other persistent contact or unreasonable disturbances.

Embarrassing or intimidating you through other people

Debt collectors must not:

- threaten or harass your spouse, partner, family member, or another person connected with you
- make any unauthorised contact with a child under the age of 18 years
- talk about your situation to other people (including family members, neighbours or co-workers) unless you have agreed to the contact—such actions may breach privacy laws (visit the Office of the Privacy Commissioner at www.privacy.gov.au or call **1300 363 992** for more information about your privacy rights)
- engage in conduct that draws people's attention to your situation (for example, send open letters to a shared post-box, leave messages that others may listen to, make

their identity or purpose known to people you work with)—again, such actions may breach privacy laws.

False or misleading statements and/or conduct

Debt collectors must not:

- make false statements about the amount you owe, or the status of your debt, for example:
 - say you owe a debt when you do not
 - say the amount you owe is greater than it is
 - say that you have no choice but to pay a debt if you have a valid defence against payment, unless there has been a court judgment (if you are disputing a debt, a debt collector should stop collection activity until any reasonable request for information—such as giving you copies of accounts and contracts – has been met, and the debt has been confirmed)
 - say that your spouse or partner must pay your debt when they have no legal liability to do so
 - say that there has been a court judgment if this is not true
- make false statements about what will happen if the debt is not paid, or what the debt collector intends to do, for example:
 - say that unpaid debts are a criminal offence involving the police or possibly jail (being in debt is not a crime!)
 - say that your children can be taken away from you (this is completely false)
 - say that you will be made bankrupt immediately, even though there has been no court judgment or bankruptcy proceedings started
 - say that your goods (for example, your car) will be seized and sold immediately, even though there is no mortgage over the goods and no court judgment (if there is a mortgage over the goods, generally you must be given notice and 30 days to pay first)
 - say that your wages will be garnished (taken), even though a court order to allow this has not been obtained
 - say that your credit rating will be damaged, if that is not true (privacy laws limit the type of information that a credit reporting agency can hold on file, how long it can be listed on file, and who can access the information)
- use other misleading appearances or actions, for example:
 - send letters demanding payment that are designed to look like court documents
 - pretend to be (or pretend to act for) a solicitor, court or government body.

Other unfair or unconscionable conduct

Debt collectors must not:

- take unfair advantage of you if you are specially disadvantaged because of illness, disability, age, illiteracy or other circumstance
- take unfair advantage of you if you are ignorant of the law, the debt recovery process, or the consequences of not paying a debt.

Key points

1. A debt may be collected by a creditor themselves or by someone acting on their behalf, like a debt collector.
2. If you are contacted by a debt collector, be polite and cooperative. In turn, you should expect to be treated in a professional and courteous manner.
3. When, where and how a debt collector can contact you is regulated by guidelines designed to ensure you are not harassed.
4. As a guide, a debt collector should only contact you when it is necessary to do so and for a reasonable purpose.
5. If you feel a debt collector has breached the guidelines, and the debt is in relation to a financial service, contact ASIC to make a complaint.

How do I complain about unacceptable conduct by debt collectors?

If you think that a debt collector has breached the ASIC/ACCC Debt Collection Guidelines, call ASIC's Infoline on **1300 300 630** or email Infoline@asic.gov.au, or visit www.asic.gov.au/complain to make a complaint online.

Where can I get more information?

- Go to www.asic.gov.au/credit for the latest updates about credit and to download copies of the regulatory guides.
- Go to www.fido.gov.au/credit for credit information and resources for consumers.
- Call ASIC's Infoline on 1300 300 630 or email Infoline@asic.gov.au.

Further information on how to complain can be found in Information Sheet 114 *What is external dispute resolution and how can it help me?*. Information Sheet 115 *Referrals: where to go for help with your debts* contains information on how to get legal advice.

Important notice

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

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases your particular circumstances must be taken into account when determining how the law applies to you.