



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 116

What can I do if I get a letter of demand?

This information sheet contains information on:

- what a letter of demand is
- what your options are if you agree you owe the debt
- what your options are if you dispute the debt.

What is a letter of demand?

If you have an unpaid debt, a credit provider's first step will often be to send you (the debtor) a **letter of demand** (sometimes called a **final notice**) before taking further action.

The letter may come from the credit provider's solicitor or a debt collection agency. The letter will ask you to pay the debt within a specified timeframe and will probably tell you they may sue you if you do not pay.

If you do not pay the debt, or if other arrangements are not made, the credit provider (the creditor) may start court proceedings.

Be aware that, while a letter of demand is not a court document, it should still be taken seriously.

What is a formal notice?

Under section 88 of the *National Consumer Credit Protection Act 2009* (National Credit Act), a creditor must send you a **formal notice** giving you 30 days to remedy the default (that is, pay the debt) before enforcement proceedings can begin.

See Information Sheet 117 *What can I do if I have received a default notice?* for more details.

What if there are added costs in the letter of demand?

Some letters of demand include claims for additional costs that have been added as extra fees or costs to collect the debt. You may not have to pay the extra costs if they are not included in the terms and conditions of the contract between you and the credit provider. Get **legal advice** or financial counselling.

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

If I agree I owe the debt, what are my options?

If you agree you owe the debt, you can:

- negotiate a **repayment plan**, or
- apply for a **hardship variation**.

A financial counsellor can help you with this (call the National Financial Counselling Hotline on **1800 007 007**).

How to negotiate a repayment plan

Credit providers will often agree to an **extended period for repayment** (or smaller periodic repayments over a longer time) when people get into difficulties.

If you are negotiating a repayment plan, **offer what you can afford to pay**—making sure that you are being realistic about your living costs and your other debts. It is in your best interests to be open and honest with the credit provider or debt collector about your other financial commitments.

Sometimes the credit provider will be willing to settle (that is, finalise) the whole debt on the basis of one **lump sum payment** of a portion of the debt. You may be able to negotiate such arrangements through the debt collector.

If you reach agreement with the debt collector:

- ask for it to be **confirmed in writing**
- confirm it in writing yourself in a letter to the debt collector
- keep a copy of your letter.

Then, make every effort to keep to the agreement.

Your rights under national consumer credit law

In the case of home loans (except for investment properties), personal loans, retail credit and credit cards, you may have a right under national consumer credit law to apply to change your repayment plan on the basis of hardship.

How to apply for a hardship variation

If you can't pay your debts because of illness, unemployment or other reasonable cause, you have a legal right to seek a **hardship variation**. This is a formal process where you ask your credit provider to vary the terms of your loan contract.

You can ask your provider to do **one** of the following:

- postpone your repayments (with interest being added onto your loan)
- allow you to make interest-only repayments for a period of time
- extend your loan period (which means you will pay less in each repayment over a longer period of time).

After you apply for a hardship variation, the credit provider must respond to your request in writing within 21 days.

If your credit provider refuses your hardship application, it must give reasons. If you think the reasons are unfair, you can complain to the credit provider's **external dispute resolution (EDR) scheme**.

For more information, see our factsheet *Can't pay your debts?* (download from www.fido.gov.au/credit, or call ASIC's Infoline on **1300 300 630**).

If I dispute the debt, what are my options?

If you are contacted about a debt that you do not owe, or if you disagree with the amount of the debt being claimed, you have a right to dispute the debt or the amount of the debt.

First, try to resolve your dispute with the credit provider.

If you aren't satisfied with the credit provider's handling of your dispute, you can complain to the credit provider's EDR scheme for independent adjudication.

If you are disputing a debt, a debt collector should stop collection activity until any reasonable request for information has been met, and the debt has been confirmed. A default listing on your credit report should also not be made during this period.

Your rights under national consumer credit law	Make sure you refer a dispute to an EDR scheme without delay. Generally, legal proceedings may not be started against you while a matter is being considered by an EDR scheme.
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'That is not my debt!'

In a straightforward case of mistaken identity, showing your driver's licence or other identification (ID) to verify your identity may be enough to resolve the situation. However, the decision to show ID is yours—you cannot be forced to do so by a debt collector.

Identity theft is when a dishonest person or group uses your personal details for their own financial gain (such as to run up a debt in your name). If you think this has happened to you, contact the credit provider and/or your financial institution immediately.

You can also get a copy of **your credit report** to make sure no fraudulent transactions have been made in your name.

For more information see our factsheet *Your credit report* (download from www.fido.gov.au/credit, or call ASIC's Infoline on **1300 300 630**).

'I thought that debt had been settled!'

Sometimes a debt collector may contact you about a debt even though you have paid it in full or it has already been settled in some other way.

If this is the case, explain the situation to the debt collector in writing and include copies of any records or information you have that prove the debt has been settled (making sure that you also retain copies). This is why it is important to always keep your own records of your debts, even when they have been paid.

If the debt has already been settled, ask the debt collector why they are contacting you. If collection activity continues without an adequate explanation, complain to the credit provider's EDR scheme.

If you think a credit provider or debt collector has acted unlawfully or in a misleading way, complain to ASIC online at www.asic.gov.au/complain or call ASIC's Infoline on **1300 300 630**.

'I don't think I owe that much!'

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

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

When you receive the statement, check it carefully. It may include recovery fees or expenses charged by the debt collector—if so, check whether you have to pay these and get legal advice if you think the fees are unfair (for example, did your original contract say anything about these fees or expenses?).

Where can I get more information?

- For more information about hardship see our factsheet *Can't pay your debts?* (download from www.fido.gov.au/credit, or call ASIC's Infoline on 1300 300 630)
- For more information about credit reports see our factsheet *Your credit report* (download from www.fido.gov.au/credit, or call ASIC's Infoline on 1300 300 630).
- Go to www.asic.gov.au/credit for the latest updates about credit.
- Go to www.fido.gov.au/credit for credit information and resources for consumers.
- Call ASIC's Infoline on **1300 300 630** or make an enquiry at www.asic.gov.au/question.

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.