

# Financial hardship

This factsheet provides information about the options available to you if you are experiencing financial hardship.

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## What is financial hardship?

Financial hardship is where you are willing but unable to pay your debts when they fall due.

This may be due to a number of different reasons such as illness (including COVID-19), unemployment, family breakdown or a change in financial circumstances.

If you are experiencing financial hardship you should contact your service or loan provider to discuss options for varying your repayments. You can do this even if your co-borrower does not agree or cannot be contacted.

If you are in financial hardship because of family violence, please see our Factsheet **Financial Hardship and Family Violence** for information specific to your circumstances.

## Applying for a hardship variation

Most credit contracts are governed by the National Credit Code. Credit contracts include agreements involving credit cards, personal loans, car loans and home loans. In most circumstances, you have a legal right to ask for hardship assistance under the National Credit Code.

Under sections 72 to 75 of the National Credit Code, if you feel you are unable to meet your obligations under the credit contract you can tell the lender about this either orally or in writing. This is known as a hardship notice. You should provide information such as why you are in financial hardship, any evidence to prove what happened, your budget and financial circumstances and exactly how much you are able to pay. You should always keep a copy of any written hardship notice that you send, and make notes of any conversations with your lender if you give notice verbally.

After you give a hardship notice, the lender has **21 days** to request more information from you to decide whether to change the contract. You must provide relevant information within **21 days** after you have received this request.

A lender does not need to change the contract if they do not believe there are reasonable grounds for why you cannot meet your obligations, or if they believe you would not be able to meet your obligations under the contract even if it was changed.

## What if the lender says 'yes'?

The lender must tell you their decision within:

- **21 days** of your hardship notice, if they do not require any additional information;
- **21 days** of receiving any additional information requested from you; or

- **28 days** of their request for information if they have not received the information they requested from you.

If the lender decides to change the contract, within **30 days** of telling you of this decision and you agreeing to it, they must give you a written notice which sets out:

- the change in the terms of your credit contract; and
- any information that must legally be given to you under the National Consumer Credit Protection Regulations, including your statutory rights and obligations.

Your arrangement should include what you will do to catch up on any missed or reduced repayments at the end of the hardship period, otherwise your credit report will keep showing late repayments.

### Eligibility for hardship variations

To be eligible for a hardship variation under the National Credit Code, your loan amount must be:

- If taken out on or after March 2013, be of any value;
- If taken out between July 2010 and February 2013, have been \$500,000 or less;
- If taken out between November 2004 and June 2010, various thresholds apply. For more information, see the hardship thresholds on the [ASIC website](#); or
- If taken out on or before 4 November 2004, have been less than \$125,000.

### Types of hardship variations you can negotiate

Even if the National Credit Code does not apply, if your lender is bound by a code of practice (which banks, credit unions and building societies generally are), it may still be required to work with you if you are in financial hardship.

Lenders often have policies to assist you if you are in financial hardship.

Some of the hardship variations you can negotiate include:

- Temporarily stopping payments;
- A reduction to interest-only payments;
- Extending the term of your loan (so that you make smaller repayments over a longer time period);
- Changing credit limits;
- Waiving fees or charges;
- Pausing debt collection;
- Reducing or freezing interest.

Lenders are not legally required to provide any of these specific variations. The kind of variation you ask for and what the lender agrees to will vary depending on your circumstances.

If you would like help applying for financial hardship, call the National Debt Helpline on 1800 007 007 to talk to a free financial counsellor.

### How will this affect your credit report?

If the lender grants a financial hardship variation, this will show on your credit report for **12 months** in most circumstances. However, if you do not have a hardship variation and you miss a repayment, this will show as a late payment for **2 years**, so it is better to apply for hardship than to miss a repayment.

It may not have to be shown if you are experiencing domestic and family violence. You should get legal advice to see if this applies to you.

Financial hardship variations can be temporary or permanent. Temporary variations, like interest only payments for a few months, will show as an "A". Permanent variations, like waiving the debt or adding the arrears to the end of the loan, will show as a "V".

The reason that you are in hardship is not shown on your credit report or used to calculate your credit score, but if you apply for credit in future, the lender might ask you questions to check whether you are still in financial hardship.

### **What if the lender says ‘no’ or doesn’t respond?**

If the lender does not approve a hardship variation, it must notify you of the reasons for refusal and your right to make an external dispute resolution (EDR) complaint to the Australian Financial Complaints Authority (AFCA).

If you are unsuccessful through the AFCA process or the National Credit Code does not apply, you might have a court claim available to you, but you should get legal advice before considering going to court.

### **What if the lender is threatening court action?**

A lender cannot take debt collection action for 14 days after refusing a hardship variation, unless you made a separate request in the last 4 months.

If the lender is threatening legal action it is important to act immediately and seek legal advice. If you are served with a statement of claim, you generally have **28 days** to respond to the statement of claim. After the 28 days has passed, the lender can apply to court for default judgment, so do not delay seeking legal advice or taking the steps below.

If your lender is a member of AFCA:

- You should lodge a complaint with AFCA rather than filing a defence in court. You can lodge the complaint online. You can also lodge an application by phone by calling 1800 931 678. You should do this as soon as possible and notify the lender that you intend to do so.

- Once you have lodged your complaint with AFCA, the lender will be prevented from obtaining judgment against you in court while your AFCA complaint is open.

If your lender is not a member of AFCA or the National Credit Code does not apply, you should get legal advice as soon as possible.

### **Where can I get more help?**

You can get more information on financial hardship from the National Debt Hotline on 1800 007 007 or <https://ndh.org.au/>

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