

# Factsheet No. 7

## Negotiating with Creditors



*This factsheet looks at ways to negotiate with your creditor if you can't afford your repayments or you can't afford to pay off your debt in one lump sum.*

- Payment by instalments
- Postponement of payments
- A reduced lump sum
- Waiving/writing off the debt
- Hardship variations to loans under the National Credit Code
- Consolidation loans
- Pro rata payments

If you have a debt that you cannot afford to pay, you can try to negotiate with the creditor. You cannot force a creditor to negotiate, but many will. There are a number of different methods of payment as an alternative to paying the full amount in a 'lump sum' (in one complete payment).

It is a good idea to put your negotiations in writing and to make sure that any agreements between you and the creditor are also in writing. You should always keep a copy of what has been agreed.

You can contact a financial counsellor, a community legal centre or a legal aid lawyer if you need help understanding your options or negotiating with the creditor.

If you believe that you do not owe the money, or that the contract has some unfair terms, you should get legal advice as soon as possible.

### **Payment by instalments**

If you can pay smaller amounts of the debt over time, the creditor might agree to let you pay off your debt by instalments.

Make sure that you can afford the instalment

amounts and that you continue to make the instalment payments when they are due.

If you do not pay the instalments you agreed to pay, the creditor may take legal action to recover the whole debt.

### **Postponement of payments**

If your inability to pay is only temporary, you could ask for a "moratorium" (a postponement of debt payment) for a set period of time.

If the creditor agrees to a moratorium, you will still have to pay the debt when the moratorium ends. If you ask for a moratorium, you might also ask that no interest and fees be charged for that period. Otherwise, the debt will increase during the moratorium period. Some creditors may agree to this kind of arrangement but they do not have to do so.

### **A reduced lump sum**

If you are unlikely to ever have enough money to pay the full amount you owe, you could offer to pay a smaller lump sum to finalise the debt.

Some creditors prefer to accept this smaller amount rather than wait a long time for their money or risk not getting anything at all.

### **Waiving/writing off the debt**

If you are suffering severe hardship and will never be able to pay off the debt due to your special circumstances, you might be able to negotiate to have the debt waived (also known as having the debt 'written off').

You will need to show that there are good reasons

why you will never be able to pay the debt. For example, you may not have any money or assets or you cannot work because of your age or disability.

It will help if you provide the creditor with documents such as: a letter confirming that you receive Centrelink payments; a letter from a social worker or financial counsellor explaining your financial position; a list of your assets (if any) together with a list or evidence of your other debts. A letter from your doctor explaining, for example, that you are unable to work because of a medical condition, may also be helpful.

### **Hardship variations to loans under the National Credit Code**

If you are temporarily having trouble making loan repayments due to circumstances like losing your job or being sick, you can apply for a variation to your loan on the grounds of hardship.

You can only get a hardship variation for a loan that is for personal or domestic use (not for business or investment purposes), such as loans for a car, household goods or a home you live in. If you entered into the loan on or after March 2013, you can apply for a hardship variation whatever the value of the loan. If you entered into a loan before February 2013, the loan must be below a certain amount depending on when you entered into it.

The National Credit Code sets out what variations can be made to a loan. These include:

- extending the period of the contract and reducing the amount of each payment;
- postponing payments for a specific period of time; and
- extending the period of the contract and stopping payments for a specific period of time.

Usually the changes will only be made for a short period until your situation improves.

You must request a hardship variation in writing. There are helpful sample letters available from the [Financial Rights Legal Centre website](#).

If the creditor refuses your request for a variation to the loan based on hardship, the creditor must provide you with the name of the relevant external dispute resolution (EDR) scheme, and you can lodge a dispute with the creditor under that EDR scheme.

If a resolution cannot be reached using the EDR scheme, you may apply to the court to change the terms of the contract. You should seek legal advice if you wish to do this.

### **Consolidation loans**

Consolidating debts usually involves getting a new loan to pay off a number of existing debts and/or loans.

Consolidating debts may not improve your situation. Sometimes the interest rate on the consolidation loan is higher than the interest on the original debts/loans. The repayments on the new loan may also be higher than the original payments. You may also have to pay a loan establishment fee.

Make sure you seek financial counselling before you decide to get a consolidation loan.

### **Pro rata payments**

If you have many debts, paying one debt can mean that other debts do not get paid. A pro rata payment system lets you make regular instalment payments in proportion to the size of each of your debts. For example, if you owe one creditor \$350 and another \$150, but you only have \$50 left over each month after living expenses, you may be able to pay the first creditor \$35 and the second creditor \$15, each month.

All your creditors need to agree before a pro rata payment system can be set up. A financial counsellor can help you negotiate with creditors about this.

You can find a Financial Counsellor from the [Financial Counsellors' Association of NSW](#) website or by calling 1300 914 408.

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*This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre.*

