



DEBT

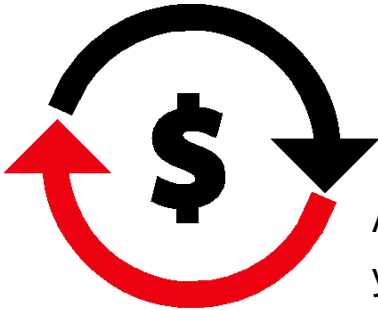
Got you down?

A guide to helping change your contract to repayments you can manage

This booklet describes how you may have the right to apply to your lender for a change to your credit contract if you are experiencing financial hardship.



FINANCIAL COUNSELLORS' ASSOCIATION
OF WESTERN AUSTRALIA



A guide to helping change your contract to repayments you can manage

The first section of this booklet relates to credit contracts entered on and after 1 July 2010

The second section of this booklet relates to credit contracts entered on and after 1 March 2013

The third section of this booklet relates to short term and medium term lending contracts and caps on credit

The fourth section of this booklet contains helpful information and resources

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ENTERED INTO ON AND
AFTER 1 JULY 2010

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SECTION

01

I can't keep up with my repayments

What can I do?

APPLIES TO CONTRACTS ENTERED INTO ON AND AFTER 1 JULY 2010

If you are eligible you could change your contract to make it easier to pay or to stop payments for a short time.

Eligibility:

- A change in your circumstances since you first signed the contract.
For example, you may be sick or unemployed

- You reasonably expect to be able to make payments again if your contract is changed

- The amount you borrowed isn't greater than \$500,000

- The credit is mainly for personal, domestic or household purposes, or in relation to residential property for investment purposes

What changes can be made to my contract?

Under Section 72 of the National Credit Code you can apply to your lender to change your contract. This is called a Hardship Variation.

Types of changes are:

- Extend the length of your contract and reduce the amount you usually pay (e.g. your contract is 3 months longer and you now pay \$80 per fortnight instead of \$100)

- Postpone payments for a set period of time, and catch up at an agreed time (e.g. you don't make payments for 2 months and double your payments to catch up at the end of the 2 months)

- Postpone payments for a set amount of time and extend your contract (e.g. you miss 3 months of payments and you extend your contract for 3 months)



How do I apply for a hardship variation?

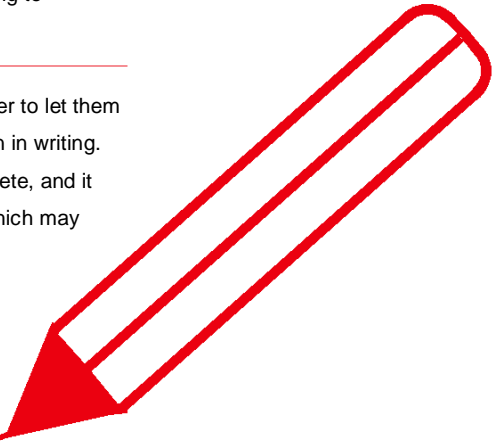
Applying for a hardship variation is best done by letter and sent via registered post (keep copies of all letters sent and your registered post receipt). This will help if you need to take the matter further at a later date. Some advantages to writing rather than phoning your lender are:

- You have proof of contact with your lender and any vital documents to help support your request

- You avoid a potentially distressing conversation

- You avoid being pressured into agreeing to solutions you cannot maintain

- It can be beneficial to phone your lender to let them know you intend to apply for a variation in writing. They may have forms for you to complete, and it also alerts them to your intentions – which may stop them commencing legal action





What do I put in my letter?

When applying for a hardship variation by letter, you will need to:

- Provide loan contract and or account numbers

- Outline the change in your circumstances and how it is causing you hardship

- Make reference to Section 72 of the Code (see 'sample letters')

- Specify which of the three changes to your contract you are requesting

- Make a realistic offer - only offer repayments you can afford

- Include an 'Income and Expenditure' statement (sample found at the end of this book)

- State if the matter is urgent and request an urgent decision if you are worried about your goods being repossessed

- Include copies of supporting documents - e.g. medical or work separation certificate; receipts for unforeseen expenses

- Set a 21 day deadline for your lender to respond by. The Code requires that your lender must reply within this time

What if I'm not eligible for a hardship variation?

If your loan is for a business purpose, it is not covered by the National Credit Code. However, you can still raise hardship difficulties with your lender. See IDR and EDR in the next section.



My variation was rejected, can I take further action?

If you have sent a letter to the lender, but you have not gotten a satisfactory response, or if the situation is very urgent, you may need to use IDR and EDR.

IDR – Internal Dispute Resolution

This is a formal way of making a complaint to a lender. You can find the IDR section of a lender by putting the word 'complaint' into the search field of their website. All financial service providers in Australia must have an IDR section.

EDR – External Dispute Resolution

The Australian Financial Complaints authority (AFCA) is a free, fair and independent dispute resolution scheme. They consider complaints about financial products and services. AFCA's service is offered as an alternative to tribunals and courts to resolve complaints consumers and small businesses have with their financial firms.

Using IDR and EDR

In a normal situation, if you send a letter requesting a change to your credit contract and you do not get a satisfactory answer, you can make a complaint to the lender's IDR section. If the IDR response is unsatisfactory, you can then lodge a dispute with AFCA 1800 931 678 or www.afca.org.au. If the situation is urgent, for example, if the lender has threatened repossession or has begun legal proceedings against you, you can go straight to EDR.

- You may contact AFCA whether legal proceedings have commenced or not

- A dispute must be lodged with the lender's EDR scheme **before** judgement has been entered

- EDR is free for consumers. The lender cannot normally begin legal proceedings after you have lodged a dispute. If the lender began legal proceedings before the dispute was lodged, it also cannot continue legal proceedings, with some minor exceptions

Sample letter 1 - Reduced Payment Arrangement

Lender's Company Name

[Your address]

Lender's Company Address

Date

Dear Sir/Madam

Re: *Your name, loan contract and/or account number*

Request for a hardship variation

I am writing to advise you of a change in my circumstances that is causing financial hardship and to request a hardship variation to my contract under Section 72 of the National Credit Code.

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that reduces my loan repayments from \$... *(insert amount)* per fortnight to \$... *(insert amount)* until the loan is repaid. I understand that the term of my loan will be longer because of this.

I have enclosed copies of *(e.g. medical certificate, employment separation certificate, whatever is relevant to your situation)* as evidence of my current circumstances. I have also enclosed an income and expenditure statement *(sample found at the end of this booklet)*.

Please advise me of the total cost of the change to my contract. If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with your IDR section. Thank you for considering my application.

Yours sincerely

[Your Signature]

[Your Name]

Sample letter 2 - Moratorium - Postpone Payments

Lender's Company Name

[Your address]

Lender's Company Address

Date

Dear Sir/Madam

Re: *Your name, loan contract and/or account number*

Request for a hardship variation

I am writing to advise you of a change in my circumstances that is causing financial hardship, and to request a hardship variation to my contract under Section 72 of the National Credit Code.

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that will postpone my loan repayments for a period of *(insert amount e.g. 3)* months. At the end of this time I will be able to double my repayments and catch up without requiring the term of the loan to be extended.

I have enclosed copies of *(e.g. medical certificate, employment separation certificate, whatever is relevant to your situation)* as evidence of my current circumstances. I have also enclosed an income and expenditure statement *(sample found at the end of this booklet)*.

Please advise me of the total cost of the change to my contract. If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with your IDR section. Thank you for considering my application.

Yours sincerely

[Your Signature]

[Your Name]

Sample letter 3 - Postpone Payments and Extend Contract

Lender's Company Name

[Your address]

Lender's Company Address

Date

Dear Sir/Madam

Re: *Your name, loan contract and/or account number*

Request for a hardship variation

I am writing to advise you of a change in my circumstances that is causing financial hardship, and to request a hardship variation to my contract under Section 72 of the National Credit Code.

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that will postpone my loan repayments for a period of (insert amount, e.g. 3 months), and for the term of the loan to be extended accordingly.

I have enclosed copies of *(e.g. medical certificate, employment separation certificate, whatever is relevant to your situation)* as evidence of my current circumstances. I have also enclosed an income and expenditure statement *(sample found at the end of this booklet)*.

Please advise me of the total cost of the change to my contract. If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with your IDR section. Thank you for considering my application.

Yours sincerely

[Your Signature]

[Your Name]

SECTION

02

I can't keep up with my repayments

What can I do?

APPLIES TO CONTRACTS ENTERED INTO ON AND AFTER 1 MARCH 2013

If you are eligible you could change your contract to make it easier to pay or to stop payments for a short time.

Eligibility:

- If your contract is covered by the National Credit Code you can apply for a hardship variation if you consider you will be unable to meet your obligations.
-
- There are no longer specific ways in which a contract can be varied. A contract can be varied in any way, provided there is a good reason for varying it, and the lender will be paid back in a reasonable time. There is no dollar limit for hardship applications for contracts entered on and after 1 March 2013.

What changes can be made to my contract?



You can request that your contract be varied in any number of ways; you are not restricted in the same way as contracts entered into prior to 1 March 2013.

You may wish to apply for a hardship variation using one of the examples below, or a combination of the examples below. These are not your only options for a variation and any reasonable offer should be considered by your lending institution.

- Extend the length of your contract and reduce the amount you usually pay (e.g. your contract is 3 months longer and you now pay \$80 per fortnight instead of \$100)

- Postpone payments for a set period of time, and catch up at an agreed time (e.g. you don't make payments for 2 months and double your payments to catch up at the end of the 2 months)

- Postpone payments for a set amount of time and extend your contract (e.g. you miss 3 months of payments and you extend your contract for 3 months)

- A combination of some or all of the above

- Any other reasonable offer provided that the lender will be repaid in a reasonable time

How do I apply for a hardship variation?

You may give your lender notice (a hardship notice), orally or in writing, of your inability to meet the obligations.

If you apply for a hardship variation orally, it is advisable to then follow that up in writing. Send the letter via registered post and keep a copy of the letter you sent along with your registered post receipt. This will help if you need to take the matter further at a later date.

The advantages to following up your call in writing are:

- You have proof of contact with your lender

- You have the date and time you called and the name of the person you spoke with when giving your hardship notice verbally over the phone

- You can also supply additional information that was requested during the call

If applying for a hardship variation over the phone make a note of the following details before making the call:

- Your loan and/or account numbers

- Outline the change in your circumstances and how it is causing you hardship

- Make reference to Section 72 of the Code - "I am requesting a hardship variation to my contract under Section 72 of the National Credit Code"

- Specify the changes to your contract you are requesting

- Make a realistic offer - only offer repayments you can afford

- If you do follow up your call with a letter, the above information should also be included along with any additional information that may have been requested or discussed during your call

What if I'm not eligible for a hardship variation?

- If you are dealing with a bank, you can rely on Clause 25.2 of the Code of Banking Practice. This requires the bank to work with you to try to overcome your financial difficulty

- If you don't meet the eligibility criteria you are still able to negotiate with your lender

- Although you won't have the backing of the National Credit Code your lender may still agree to change your contract or give you some extra time to pay

- You can use the sample letter as a guide, BUT leave out the parts in italics that refer to hardship variations and Section 72

- Financial counsellors are free, independent and able to assist with negotiating on your behalf with the lender



My variation was rejected, can I take further action?

If you have sent a letter to the lender, but you have not gotten a satisfactory response, or if the situation is very urgent, you may need to use IDR and EDR.

IDR – Internal Dispute Resolution

This is a formal way of making a complaint to a lender. You can find the IDR section of a lender by putting the word 'complaint' into the search field of their website. All financial service providers in Australia must have an IDR section.

EDR – External Dispute Resolution

(AFCA) The Australian Financial complaints Authority is a free, fair and independent dispute resolution scheme. They consider complaints about financial products and services. AFCA's service is offered as an alternative to tribunals and courts to resolve complaints consumers and small business have with their financial firms/ lenders.

Using IDR and EDR

In a normal situation, if you send a letter requesting a change to your credit contract and you do not get a satisfactory answer, you can make a complaint to the lenders IDR section. If the IDR response is unsatisfactory, you can then lodge a dispute with the EDR scheme, AFCA. If the situation is urgent, for example, if the lender has threatened repossession or has begun legal proceedings against you, you can go straight to EDR.

- You may contact the AFCA whether legal proceedings have commenced or not 1800 931 678 or www.afca.org.au

- A dispute must be lodged with AFCA **before** judgement has been entered

- EDR is free for consumers. The lender cannot normally begin legal proceedings after you have lodged a dispute. If the lender began legal proceedings before the dispute was lodged, it also cannot continue legal proceedings, with some minor exceptions

Sample letter - Postpone Payments and Extend Contract

Lender's Company Name

[Your Address]

Lender's Company Address

Date

Dear Sir/Madam

Re: *[Your name, loan contract and/or account number]*

Request for a hardship variation

I am writing to advise that I am unable to meet my obligations and am requesting a hardship variation to my contract under Section 72 of the National Credit Code.

As I explained to *[name of the person you spoke to]* on *[date that you called]* my circumstances have changed. *[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]*

Due to these circumstances I am requesting a variation that will *[insert your request here, e.g. postpone my loan repayments for a period of X month's term of the loan to be extended accordingly.]*

I have enclosed copies of *[e.g. medical certificate, employment separation certificate, whatever is relevant to your situation]* as evidence of my current circumstances. I have also enclosed an income and expenditure statement. *(sample found at the end of this booklet).*

Please advise me of the total cost of the change to my contract. If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with your IDR section and EDR if necessary.

Thank you for considering my application.

[Your Signature]

[Your Name]

SECTION 03

What
should
I know
about

small and
medium
amount
credit
contracts?

APPLIES TO NON-BANK LENDERS

A Small Amount Credit Contract (SACC) is:

- a contract which is not a continuing credit contract,
- and the lender is not a bank, and
- the credit limit is \$2,000.00 or less, and
- the term of the contract is at least 16 days but no longer than 1 year,
- and the borrower's obligations are not secured

For contracts entered into on or after 1 March 2013, a number of enhancements now apply:

- The lender must make reasonable inquiries about the borrower's requirements and obligations in seeking the loan
- The lender must presume that a Small Amount Credit Contract or refinance will cause hardship if: (a) the debtor currently has a SACC and is in default; or (b) has had 2 or more SACCs in the past 90 days
- The lender must apply the Protected Income Calculation if the majority of the borrower's income is from Centrelink. If this is the case, then the repayments can't be more than 20% of their gross income
- The lender must provide "Health Warnings", in store, online and over the phone. Essentially they warn that these types of loans are expensive, might not solve your money problems and suggest other options like contacting the Telephone Financial Counselling Services on 1800 007 007

Caps on the cost of credit

(Only applies to contracts entered into on or after 1 July 2013)

- The most a lender can charge for this loan is an establishment fee of 20% of the amount loaned plus a monthly fee of 4% of the amount loaned

- No other interest, fees or charges are allowed, except default fees, government charges and enforcement expenses

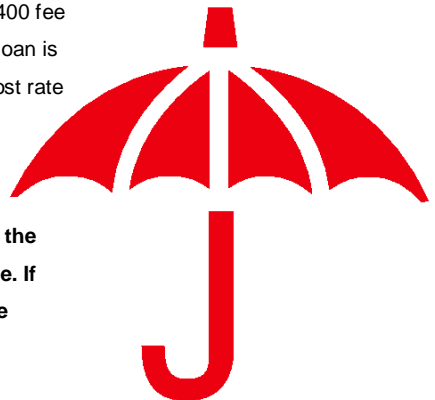
- If a borrower defaults, the most the lender can recover is twice the amount loaned. For example, if you borrow \$300.00 and default, the most the lender can ever get out of you in fees and charges is \$600.00. This doesn't include enforcement expenses

Medium Amount Credit Contracts

A Medium Amount Credit Contract (MACC) is a credit contract under which, in general terms, the loan is from \$2001 to \$5000 and the term is 16 days to 2 years.

MACCs have a cap determined by an annual cost rate (interest plus fees and charges) which must not exceed 48 per cent, with the formula allowing for an additional \$400 fee to be charged. Other credit contracts (e.g. where the loan is for more than \$5000) have a cap where the annual cost rate must not exceed 48 per cent.

These caps do not apply to Authorised Deposit Taking Institutes (ADIs) who are listed on the Australian Prudential Regulation Authority website. If you are experiencing financial hardship with these types of loans, speak with your lender. You could also contact a financial counsellor for assistance.



SECTION

04

**Where can
I go to
get more
information?**

**Where can
I go to
get help?**

For information on dealing with debts and lenders you could check out these websites:

<http://www.ndh.org.au>

The National debt helpline is a not for profit service that helps people tackle their debt problems. The professional financial counsellors offer a free, independent and confidential financial counselling service

MoneySmart

MoneySmart is an initiative of the Australian Securities & Investments Commission. It offers you tips & tools to help you make the most of your money.

www.moneysmart.gov.au

Financial Counsellors

Found throughout WA, financial counsellors can assist with credit and debt problems and may advocate on your behalf with lenders.

To find your nearest free financial counsellor contact:

1800 007 007

www.financialcounsellors.org

Consumer Credit Legal

Service WA

Provides phone information, and advice about credit issues.

Ph: (08) 9221 7066

www.cclswa.org.au

What about External Dispute Resolution?

(AFCA) The Australian Financial complaints Authority is a free, fair and independent dispute resolution scheme. They consider complaints about financial products and services. AFCA's service is offered as an alternative to tribunals and courts to resolve complaints consumers and small business have with their financial firms/ lenders

They consider complaints about:

- credit, finance and loans
- insurance
- banking deposits and payments
- investments and financial advice
- superannuation

The role of AFCA is to assist consumers and small businesses to reach agreements with financial firms about how to resolve their complaints. AFCA is impartial and independent. They do not act for either party to advocate their position. If a complaint does not resolve between the parties, AFCA will decide an appropriate outcome.

Decisions that AFCA make can be binding on the financial firm involved in a complaint. AFCA can award compensation for losses suffered because of a financial firm's error or inappropriate conduct. There are other remedies provided for superannuation complaints. AFCA do not, however, award compensation to punish financial firms or impose fines.

Courts

You may incur further costs if you choose to take this action.

You can take further action through:

- the Federal Court;
- the Federal Circuit Court; and
- superior courts and lower courts of a State or Territory

Income and Expenditure Statement

Fortnightly Income

Wages/Salary	\$	Hairdresser	\$
Social Security	\$	Vet bills/Dog wash	\$
Parenting Allowance	\$	Rent of household goods	\$
Family Payment	\$	Child Support	\$
Child Support	\$	Internet costs	\$
Austudy	\$	Holidays	\$
Board	\$	Clothing	\$
Other	\$		
SUBTOTAL	\$	SUBTOTAL	\$

Fortnightly Living Expenses

Mortgage/Rent	\$	Food	\$
Water account	\$	Take-away/Eating out	\$
Council rates	\$	Petrol/Parking	\$
Rates	\$	Bus/Taxi fares	\$
Electricity	\$	Entertainment/Foxtel	\$
Gas	\$	Sports	\$
Telephone	\$	Alcohol/Cigarettes	\$
- Landline	\$	Day care	\$
- Mobile	\$	Bank fees	\$
Home maintenance	\$	Computer consumables	\$
Mowing/gardening	\$	SUBTOTAL	\$
- Personal	\$	Creditors	\$
	\$		\$
	\$		\$
- Car insurance	\$		\$
- Home/Contents	\$		\$
Super	\$		\$
Ambulance costs	\$		\$
Chemist	\$		\$
Dentist	\$		\$
Medical costs	\$	SUBTOTAL	\$
Medical insurance	\$	Total income	\$
Registration	\$	Total expenses	\$
Vehicle maintenance	\$	Difference	
Drivers licence/RAC	\$	(Income - Expenses)	\$
Gifts	\$		
Education costs	\$		



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