



Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre Inc.
ABN 40 506 635 273

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FINANCIAL HARDSHIP

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

CASE STUDY

Joe had a car loan and a home loan with a bank. Joe had been working as a Storeman. The business Joe was working for went broke leaving Joe without a job. Joe started looking for another job but he knew he would not be able to make his next few repayments on his loans. Joe was confident he would get another job but he needed some breathing space. At first the lender was not sympathetic, so Joe sought legal advice about his rights under the credit law.

WHAT IS FINANCIAL HARDSHIP?

Financial hardship is difficulty in paying the repayments on your loans and debts when they are due. There are often two main reasons for financial hardship:

1. You could afford the loan when it was obtained but a change of circumstances has occurred after getting the loan; or
2. You could not afford to repay the loan when it was originally obtained.

If you are in the second category get legal advice immediately.

If you are in financial hardship you have certain rights if your loan is covered by the credit law. See [Fact Sheet: Does the credit law apply?](#) If you have a credit card, personal loan, car loan or home loan the credit law will apply if the loan was taken out for personal purposes. Even if the credit law does not apply you can and should use financial hardship to try and negotiate a repayment arrangement.

FINANCIAL HARDSHIP AND THE CREDIT LAW

The credit law has sections (72–75) that specifically deal with financial hardship. From 1 July 2010, all requests for hardship are under the new credit law even if the contract was entered prior to that date.

Section 72 of the credit law covers the circumstances where you can request a repayment arrangement on the grounds of financial hardship. This is called a hardship variation.

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You must be having (or will have) trouble making your loan repayments because of reasonable cause (eg illness or unemployment). This is a very wide definition.

REMEMBER

You can ask for any type of repayment arrangement as long as it will reasonably repay the loan.

You are entitled to request financial hardship even if the other co-borrower does not agree or is unable to be contacted.

HOW TO APPLY FOR A HARDSHIP VARIATION UNDER THE CREDIT LAW?

You can call or write to the lender straight away requesting a repayment arrangement. A sample letter is available at [Sample Letter: Request for Hardship Variation](#). Keep a copy of the letter you send. If you ask for it over the phone keep notes on what was said.

When asking for a hardship variation, you should consider the following:

1. The lender is more likely to accept your request if it is reasonable. Try to strike a balance between what you can afford and trying to at least meet some of the loan commitments during your period of hardship
2. Ask the lender to send out a financial statement to complete.

This means giving details of:

- The reasonable cause for hardship, for example, doctor's certificates for an illness.
- Your current income and other major financial expenses, for example, other loans.
- What repayments you can afford.

There is no requirement that you give information that is not relevant to the application.

IMPORTANT

Even if the lender is demanding unrealistic repayments, it is in your interest to keep making some repayments to the loan. You should continue to pay whatever you can afford during negotiations.



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WHAT IF THE LENDER SAYS “NO” OR DOES NOT RESPOND?

Under the credit law if you request a variation of your contract on the grounds of financial hardship then:

1. The lender can request further information. This request must be made within 21 days of your request for hardship.
2. You must provide any relevant information requested
3. The lender must then respond in writing within 21 days stating:
 - Whether the lender agrees to the change, and
 - If the credit provider does not agree to the change, notifying you of
 - the contact details of the relevant independent dispute resolution scheme (EDR) See Factsheet: Dispute Resolution
 - your right to go to EDR and
 - the lender’s reasons for refusing the hardship application.

If the lender does not agree to the application for change then you can apply to External Dispute Resolution scheme (EDR) (See Fact Sheet: Dispute Resolution) for the requested change.

If you are unsuccessful in EDR, or your lender is not a member, you still have the option of going to court but get legal advice before you do this.

THE LENDER IS THREATENING TO TAKE ME TO COURT OR I HAVE JUST RECEIVED A STATEMENT OF CLAIM FROM COURT

If you have received a default notice and/or the lender is threatening legal proceedings, you need to act urgently. You should immediately:

1. Send a letter to the lender requesting change on the grounds of hardship (if you have not sent one). If this is not possible ring the lender and ask for a change on the grounds of financial hardship.
2. Lodge an application in writing or online in EDR. The two EDR schemes are:
 - Financial Ombudsman Service Australia www.fos.org.au
 - Credit and Investments Ombudsman www.cio.org.au.

Call 1800 367 287 (1800 FOS AUS) to check which EDR to lodge with.

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IMPORTANT: The lender cannot commence court proceedings against you once you have lodged a written dispute with EDR until the dispute is determined (or the EDR considers that it cannot consider your dispute).

Get legal advice.

IF YOU HAVE RECEIVED A STATEMENT OF CLAIM:

1. You have 28 days from the date you are served with Statement of Claim to file a defence. After the 28 days has elapsed the lender can apply for judgment. It is recommended you lodge in EDR rather than file a defence in Court. You must lodge in EDR before the lender can get judgment. So lodge in EDR as soon as possible. (See point 2. above).
2. If you lodge online you will immediately get an acknowledgment that the dispute has been lodged.
3. Once you have lodged in EDR the lender must agree not to get judgment until the matter is dealt with by the EDR.
4. If the lender is still threatening to get judgment ring the EDR and let them know this and get legal advice.

WHAT IF I AM NOT ELIGIBLE FOR A HARDSHIP VARIATION UNDER THE CREDIT LAW?

If your lender is bound by the Code of Banking Practice (banks), the Mutual Banking Code of Practice (Credit Unions / Building Societies) or a member of the Mortgage & Finance Association of Australia then those lenders have obligations to work with you if you are in financial hardship. These obligations may cover your loan even if the credit law does not apply or you are a small business or investment borrower. You can use a breach of those obligations as a reason to complain to EDR.

You should still contact the lender and explain your situation. Ask for a reduction (or postponement) in your repayments for period of time. If the lender agrees, confirm the agreement in writing. Keep a copy of the letter. If the lender will not agree, you should keep making some of your repayments (if you can) and get advice from a financial counsellor and/or make a claim to an external dispute resolution scheme if your lender is a member.

If the lender will not agree to a change in repayments get advice. If court proceedings are commenced, you must get legal advice immediately.

If your financial difficulties are likely to be long term, it is recommended you get a financial counsellor to assist you.

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CAN I REQUEST A REDUCTION IN THE INTEREST RATE?

You may request a reduction in the interest rate, or even a “freeze” on all interest, but the lender has no obligation to agree. This is not one of the changes covered by the Hardship Variation right created under the credit law, so you cannot ask EDR to make a determination that includes a reduction in interest. Despite this, lenders sometimes agree to reduce or freeze interest on loan accounts for a short period of time on credit cards. Lenders rarely agree to interest freezes or even reductions on personal loans or home loans.

If your lender is covered by one of the industry Codes of Practice mentioned in the previous section, there is no limit apart from reasonableness on the type of variation you can ask for. As with any other request for a repayment arrangement, you should put your request in writing and provide as much evidence as possible of your financial circumstances and your illness, disability or other good reason.

WILL APPLYING FOR HARDSHIP AFFECT MY CREDIT RATING?

Obtaining a hardship variation can protect your credit report – if you have a reduced repayment arrangement in place and you are up to date on this arrangement, then you are not in default and cannot have a default listing placed against you. You will also avoid default or late payment fees and interest.

NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources. If you are in financial hardship with a home loan see [Fact Sheet: Mortgage Stress](#).

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