

3RD EDITION

THE MORTGAGE STRESS HANDBOOK

a **practical guide** for people having trouble with their mortgage



Note to readers

The *Mortgage Stress Handbook* was first published in 2009 by Legal Aid NSW.

Free copies are available from www.legalaid.nsw.gov.au/publications or ring (02) 9219 5028.

The Handbook is available online at www.legalaid.nsw.gov.au/mortgagestresshandbook

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This publication is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of printing, the information shown is correct but may be subject to change. You can find out if the law has changed since publication by contacting the organisations on pages 83 – 87.

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1 **How to use this handbook**

Getting behind on your repayments for a home loan is stressful. This handbook will help guide you to get a repayment arrangement in place with your lender.

The handbook covers:

1. What the lender has to do to take possession of your home
2. What you can do to stop the lender taking possession of your home
3. How to negotiate a repayment arrangement
4. What to do if the lender won't agree to a repayment arrangement
5. Accessing your superannuation and mortgage assistance (if available)
6. Getting a stay if the lender has a court order to evict you from your home
7. Getting help

The handbook does not cover:

1. Getting a home loan
2. Business loans
3. Loans for investments other than residential property e.g. shares
4. Disputes with your lender other than financial hardship e.g. unjustness or unfairness, disputes over exit fees

5. How to deal with defaults under your home loan other than your failure to make your regular loan repayments (such as your bankruptcy or your failure to keep the property insured).

If your loan is for business or investment (e.g. to buy shares), the information in this handbook may not apply to you. You still may have rights under an industry Code of Practice. See Chapter 13 for the relevant sections of the Codes of Practice. Your lender may also be a member of a dispute resolution scheme.

Is my problem urgent?

In some cases your situation is so urgent you do not have time to start reading through this handbook. Chapter 2 gives you a quick guide to recognising that your situation is urgent and points you to the sections most relevant to you so that you can take immediate action.

Get legal advice

It is recommended that you get legal advice about your situation. See useful contacts at Chapter 14 on how to get free legal advice and how to contact a free financial counsellor.

➡ Remember

You may need to ask for legal advice more than once. Don't be afraid to keep getting legal advice or financial counselling assistance as your situation develops.

2 Is my problem urgent?

Your right to make a repayment arrangement depends on where the lender is up to in the process to take possession of your home. Chapter 3 describes the steps the lender must take to get possession of your home.

To work out what to do next you need to know:

1. Has a default notice been sent to you? The default notice must give you at least 30 days to repay the arrears (the amount you are behind in repayments plus your normal repayment due that month).
2. Have you received a Statement of Claim or Summons from the Court for possession of your home and/or the amount outstanding on your home loan? If so when did you receive the Statement of Claim/Summons?
3. Has the lender obtained judgment from the Court? If you received Court documents some time ago, check with the Court to see if the lender has obtained judgment. The lender can apply for judgment at any time after the time for response to the Court proceedings has expired. Details for contacting the Court will be on the Court documents. You will need to tell the Court Officer some details included in the Court paperwork, so make sure you have it with you when you ring. A list of Court contacts appears at **Useful contacts**, Chapter 14.
4. Have you received a notice from the Court telling you to vacate your home?

Remember

If any of the previous 4 steps has occurred your matter is urgent. If the lender has not obtained judgment you need to see Chapters 6 and 7 immediately. If the lender has judgment, get legal advice (see Chapter 14 for **Useful contacts**) and see Chapter 12.

Dispute resolution

All home loan lenders must now be members of an approved free dispute resolution scheme. (In fact all lenders who give consumer credit loans—such as credit cards and personal loans or loans for investment in residential property must be members). There are two schemes:

1. Financial Ombudsman Service ph: 1300 78 08 08
www.fos.org.au
2. Credit Ombudsman Service ph: 1800 138 422
www.cosl.com.au

Using a dispute resolution scheme is the best way for you to resolve your financial hardship dispute with your lender. This handbook will refer to dispute resolution throughout as it is the most important right you have.

If you are unsure where you are up to in the repossession process you should consider lodging a dispute with a dispute resolution scheme immediately because:

- dispute resolution schemes are free
- The lender cannot start or continue legal action while your matter is being considered by a dispute resolution scheme
- It will give you an opportunity to negotiate with the lender (with the assistance of the dispute resolution scheme)

You cannot raise a dispute or get financial hardship assistance from a dispute resolution scheme after the lender has obtained judgment from a Court. You may be able to seek assistance for other disputes but not if the dispute relates to the judgment. So if you have received court documents you must consider lodging a dispute with a dispute resolution scheme **immediately**.



Notes

A series of 20 horizontal dotted lines for taking notes.

3

Can the lender take my house—What is the process?


The lender must take a number of steps before it can take possession of your home. The sooner you act in the process, the more likely it is that you can make a repayment arrangement.

Default (you missed a repayment)




Default notice under Section 88 of the Credit Law


Note: You may get other default notices but the important default notice is the one that gives you at least 30 days to fix the default and has a Form 12 attached (see page 10)










At least 30 days to pay the amount of the default and the usual repayment



If the default and usual repayment are paid then the contract goes back to normal
(the lender cannot commence legal action)



If not, the lender can make the whole loan repayable

 <p>Repossess your home (without commencing court proceedings) to recover the whole debt</p>	 <p>Statement of Claim or Summons served on you for the arrears and/or the whole debt and/or the possession of your home</p>
	 <p>You have a fixed number of days (depending on the State or Territory you live in—see Chapter 13) from the date of service of the Statement of Claim/ Summons to file a defence or lodge your dispute with a free dispute resolution scheme</p>
	 <p>If you do nothing, or file a defence and lose, the lender gets a court judgment</p>
	 <p>Lender applies for a writ (an order) to take possession of your home</p>
	 <p>Letter telling you when the Sheriff will come to change your locks (e.g. Notice to Vacate)</p>
	 <p>Sheriff comes to your home, evicts you and changes the locks</p>



It gets very hard to negotiate a repayment arrangement to save your home or even to get time to sell your home after the lender has obtained judgment. Try taking action before that if you possibly can. If it's already too late, get legal advice (see Chapter 14 for **Useful contacts**) and see Chapter 12.



Doesn't the lender have to go to court to get possession of my home?

No, they do not have to go to court but they do in almost every case. This is so they can get a Sheriff to ask you to leave and change the locks on your home by order of the Court.

The most common exception to this is where the property is rented, vacant or undeveloped land. If your home is rented the lender may enter into possession and receive rent without a court order. If these situations apply to you, your matter is urgent and you need to act as soon as you have received a Form 12 default notice.



This form will be attached to the default notice:

**Form 12 Information about debtor's rights after default
Paragraphs 88 [3] [f] and [g] of the Code regulation
86 of the Regulations**

If you cannot make a repayment:

1. Contact us immediately

Contact us [*insert telephone number or email address for dealing with financial hardship applications*] to discuss your situation. If there is a reason why you cannot make repayments we may be able to help you by agreeing to vary your contract. The sooner you contact us the easier it will be to assist you.

You have specific legal rights to request changes be made to your contract to help you repay the debt if you:

- cannot make repayments due to hardship [for example, illness, unemployment or some other good reason]; and
- expect to be able to make the repayments if the terms of your contract are changed; and
- entered into your contract:
 - on or after 1 July 2010 and the amount you have borrowed is less than \$500,000; or
 - before 1 July 2010 and the amount you have borrowed is less than the relevant threshold*.

You may request that we:

- extend the term of your contract and reduce repayments; or
- extend the term of your contract and delay payments for a set time; or
- delay payments for a set time without extending the term of your contract.

Alternatively, you may request that we negotiate with you to postpone any further action that we may take against you.

If you do not contact us before *[insert default notice period end date]*, we may commence further action against you.

IMPORTANT

There is no guarantee that we will agree to change your contract or postpone any further action.

After we receive your application, we will provide you with a written notice within 21 days stating whether or not we agree to the change.

If we agree, you will receive a written notice detailing the agreement within 30 days.

If we refuse, we will provide you with reasons. You have the right to have the decision reviewed.

2. Right to review

If we refuse your request to change your contract, you can ask us to reconsider. If we still refuse, or if we do not respond to your request within 21 days, you can go to *[insert name of relevant external dispute resolution scheme]* by *[insert contact details and method[s] for lodging complaints]*. You should apply as soon as we refuse your request or fail to respond.

EXTERNAL DISPUTE RESOLUTION IS A FREE INDEPENDENT SERVICE THAT RESOLVES SPECIFIC COMPLAINTS

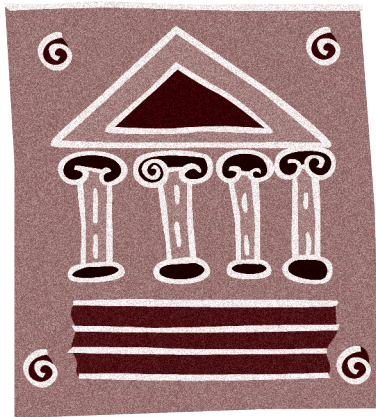
If we fail to respond, we may have breached our obligation to you. You can contact the Australian Securities and Investments Commission (ASIC) on 1300 300 630 or through ASIC's website at *asic.gov.au*.

Alternatively, if we refuse, you can ask a Court to make changes to your contract.

You can also ask a Court to delay enforcement action against you. You may wish to get legal advice, for example from a community legal centre or legal aid office, on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

* *You can find out what the relevant threshold is by referring to this website – www.moneysmart.gov.au or contacting ASIC on 1300 300 630.*



4

What if I think the lender or mortgage broker has done something unfair?

When you are in mortgage hardship it can feel unfair that the lender is demanding to be paid when you are doing your best to catch up. Sometimes, there might be more to the unfairness than your inability to meet your mortgage repayments. There may be something unfair about your contract with the lender, or the way the loan was given.

The checklist below is a guide to when the “unfairness” may be worth investigating as a legal dispute with the lender. If some or any of the checklist below applies to you then get legal advice. The checklist does not mean you will win your dispute, it just means you should get legal advice about what, if anything, you can do about it.

Checklist

- Is the amount being claimed incorrect?
- Have any of your repayments not been credited against the loan?
- Did you sign a declaration stating that the loan was for business/investment purposes when it was not for the purpose stated? e.g. did the lender or mortgage broker tell you to sign a declaration that the loan was for business when it was really a loan to refinance your home loan?
- When you got the loan did the lender or mortgage broker know (or should the lender/mortgage broker have known) you could not afford to repay the loan?

- Were you misinformed about the loan? e.g. told you could refinance after 12 months to a lower rate when this was not true.
- Did you only sign for the loan to help a family member or friend?
- Did you sign the loan documents and/or the mortgage? If not, you may be the victim of fraud.
- Did someone threaten you into signing documents or getting the home loan?
- Were you unable to read or understand an explanation of the contract? e.g. you don't speak English or you cannot read.
- Were you unable to protect your own interests when you got the loan? e.g. you had some mental health problems at that time.
- The loan is unjust because of other circumstances (not covered above).

🔗 Remember

Just because the lender did something unfair does not mean you do not have to repay your home loan. If you received the benefit of purchasing or staying in your home, then you will usually need to repay the money you borrowed. You may be able to successfully dispute the interest and fees charged by the lender.



5

Catching up on repayments: my options

Below is a list of options to consider. The options are designed to help you catch up on your mortgage payments. As none of the options below are certain to work you MUST still make a repayment arrangement based on your income (see Chapter 6). It is strongly recommended that you do not make promises to pay based on one of the options below. If you do pursue any of the options below, and you are successful THEN you can pay this money to the lender.

Remember

There is no point selling your possessions, accessing your superannuation or getting further loans if you will need to sell your home anyway.

- Do a budget and cut down on unnecessary expenses
- Rent out your home and live (hopefully rent free or cheaper) somewhere else until you can manage your repayments
- Take in a boarder
- Get help from friends or relatives (but remember they may want to be repaid)
- Get Mortgage assistance (if available). See Chapter 11.
- Access your superannuation (if available). See Chapter 10.
- Sell some of your possessions
- Consider refinancing your home loan (only if you can get a cheaper

rate **and** you can afford the new repayments. **Beware** of predatory lenders – see below)

- Consider applying for a repayment arrangement on other debts while you catch up on your mortgage. Do not simply ignore other debts as you can eventually lose your house because of unsecured debts like credit cards – it just takes a bit longer.
- Consider changing your loan to an interest-only loan for a fixed period (this will reduce your repayments during this period)



Beware of predatory lenders

If you are considering refinancing your home loan be careful to avoid high cost exploitative lenders.

Things to look out for:

- The loan is described as a business/investment loan and you are required to sign a declaration to state that the credit law does not apply.
- The mortgage broker charges a large fee.
- The loan is for a short term.
- The loan is for interest only for a term but you cannot afford to repay principle and interest repayments.
- The interest rate is quoted “per month” instead of “per annum”, or is otherwise particularly high.
- You do not have to make repayments for a set period, or the whole loan, but the whole loan amount is payable within a short time (less than 5 years).

Do not refinance if the repayments on the new loan will be higher than the repayments you are currently required to pay!

6 Making a workable repayment arrangement—my rights!

When you are in mortgage stress there are two main things you have to do:

1. Keep making repayments to your home loan (of an amount you can afford); and
2. Negotiate an affordable and realistic repayment arrangement with your lender.

Making repayments

Your home is where you live. It is your shelter. **It is your highest priority debt repayment.**

Your home loan repayments are your highest priority because:

- If you do not pay the lender can take your home (after completing certain steps)
- It is a large debt so interest will accumulate fast
- It is easier to make repayment arrangements (or even arrangements where you do not make any repayments for some months) on smaller debts like credit cards

When you decide which debts are to be paid, it is strongly recommended that you make your home loan repayment in full if you can. **If you cannot make it in full then pay as much as you can on a regular basis.**

It is better to pay an amount on a regular basis and try to pay more when you can than paying lump sums on an irregular basis. This is because with regular repayments the lender can see how much you can afford and that you will keep to a regular repayment amount.

The problem with direct debits and mortgage stress

If you are making your mortgage repayments by direct debit then you will have a problem if you are in financial hardship and cannot afford the repayment. If there is not enough money in your savings account to cover the full repayment, the direct debit will be rejected (“dishonoured”) and you will not make any repayment at all. This will cause further financial hardship as you may be charged fees on your savings account and your home loan.

If you cannot make the full loan repayment then you need to either:

- Contact your lender and lower the direct debit to an amount you are sure you can afford; or
- Cancel the direct debit and make repayments using another method e.g. BPay, Direct Credit.

If your income is irregular, you might want to set up a direct debit for a regular lower amount and use an alternative payment method to make extra payments when additional income is available. Whatever you choose to do you need to do it as soon as possible. If you want to cancel your direct debit you can do this by notifying the bank, credit union or building society where your savings are held. Once you have cancelled the direct debit the bank, credit union or building society must stop deducting repayments. A letter you can use to cancel a direct debit is at <http://financialrights.org.au/sample-letter/letter-to-financial-institution-cancelling-a-direct-debit-authority>

Some lenders insist on repayments by direct debit only. If you are having trouble finding an alternate way to pay your lender, get advice.

Negotiating a repayment arrangement

Your rights

The credit law gives you some important rights when you are in financial hardship:

1. The right to apply for a financial hardship arrangement - being a change in repayments. The application for financial hardship is called a "hardship notice". The notice can be verbal or in writing. The request does not have to be formal—an expression that you are having difficulty with repayments is sufficient.

•↔ Remember

The lender does not have to agree to the change if you will not reasonably be able to repay the loan if the change is granted. There must also be a reasonable cause for the need for the change.

2. Within 21 days of the hardship notice the lender can ask for relevant information, for example, payslips, medical certificate and/or a current statement of your financial position. You must provide the requested information (but it must be relevant).
3. After the lender has received the requested information it must respond in writing within 21 days (except if the agreed arrangement is under 90 days) stating:
 - a. whether the lender agrees to the change;
 - b. if the lender does not agree to the change then notify you in writing:
 - i. That the requested change is not agreed
 - ii. The lender's reason for refusal
 - iii. Your right to go to a dispute resolution scheme and the contact details for that scheme

4. The lender cannot commence enforcement proceedings after the hardship notice is given until the response under point 3b above has been sent (unless you have already applied for the same hardship arrangement in the last 4 months).
5. If the lender agrees to the suggested change the lender must set out the details of the change in writing within 30 days after the agreement is made.
6. If the lender does not agree to the change your next step is to apply to a dispute resolution scheme for a review of that decision.
7. If you are unsuccessful in a dispute resolution scheme you still may have the option of going to court.

Industry Codes of Practice

Many lenders agree to comply with an industry Code of Practice. There are three main Codes of Practice. In each Code of Practice there are sections that cover financial hardship and how the lender should respond to your request for a repayment arrangement. See Chapter 13 for the relevant sections of the Codes of Practice.

Working out what you want to ask for

Step 1

Before you do anything you need to work out what you want to offer as a repayment arrangement. The repayment you offer must be affordable. You must be able to make the repayment each month.

Do not offer to make repayments you cannot afford.

There are several ways to work out what repayment you can afford:

1. Call a financial counsellor for assistance on 1800 007 007
2. Do a budget see www.moneysmart.gov.au

As a guide, the repayment you offer should not be more than 50 – 60% of your income. You need to make sure you have income left for basic needs such as food.

If you cannot afford to make any repayments then you will need to ask for a period of time of making no repayments.



There are serious disadvantages to making no repayments at all:

- Your lender is less likely to consider further requests for hardship if you have been making no repayments at all,
- your debt will grow very fast, and
- you will get out of the habit of making regular repayments.

Step 2

You need a plan on how you will return to making the usual repayments.

If you are not going to be able to return to making the usual repayments to pay off the loan for the foreseeable future then you need to consider selling your home. See Chapter 8.

In many situations you may not know when you will be able to return to making the usual repayments, for example, if you are ill or looking for work. In these situations you need to estimate how long you will need and ask for further time, if required.

CASE STUDY

Coco has just become unemployed. When Coco approached her lender for a repayment arrangement she asked for a reduced repayment arrangement for 6 months. Coco believed she could get a job in 6 months. Coco managed to get a job after 4 months. She returned to making her usual repayments, the arrears were added to the loan and the term of the loan was extended.

Calling the lender

You need to make sure you cover the following when you call the lender:

1. Make a note of the phone conversation (use page 24 to make notes).
2. Ask to be transferred to the financial hardship team (if there is one).
3. Tell the lender you are in financial hardship.
4. Tell the lender what you can afford to pay per month.
5. State how long you need to make reduced repayments for. If you are unsure how long, you should ask for between 3 and 6 months.
6. Ask that the term of the loan be extended (alternatively you will need to pay extra later to make up for the amounts unpaid during the repayment arrangement). Ask how much your new repayments will be at the end of the variation. If you won't be able to afford these new repayments, insist on extending the term of the loan instead.
7. Request that all legal action, default fees and default interest stop while the lender considers your request.
8. Request that the lender not list a default on your credit report.
9. Ask the lender to agree to the above request.
10. Ask for a postal address and/or email address for the lender.

If you can, confirm the agreement in writing.

Writing to the lender

If you are not comfortable calling the lender, you can write and give a hardship notice instead. A sample letter for you to use is included in this handbook in Chapter 13. If you have tried calling the lender without success, you might want to try writing to the lender instead.

Remember

If you have received court documents, or you have a default notice due to expire then you need to act immediately. Instead of calling or writing to the lender, first lodge a complaint with a dispute resolution scheme straight away and then write to the lender immediately afterwards.

Completing a Statement of Financial Position

The lender may ask you to complete a Statement of Financial Position. You should agree to do this and it is recommended you get help from a financial counsellor in completing this form. Tell your lender if you need time to see a financial counsellor.

It is important that your Statement of Financial Position is consistent with your repayment request.

If your Statement of Financial Position shows that you have more money available than you are offering in reduced repayments:

- you need to check that you have included all your essential expenses. If you have done so, then you need to consider offering more in repayments.
- If your Statement of Financial Position includes expenses the lender may consider frivolous, or unnecessary, you need to ask yourself whether you can do without those things.

If, on the other hand, your Statement of Financial Position shows that you cannot afford the repayments offered:

- the lender may reject the application because you are not likely to keep to the arrangement or get back on track with your loan.

If you have checked your income and expenditure is correct, and there is nothing you can change to increase your income or lower your expenditure, then you need to offer less and/or consider selling your home (see Chapter 8).

Take notes when you call the lender (see page 22)

Date / /

Time:

Lender Reference (who you spoke to):

.....
.....
.....
.....

Date / /

Time:

Lender Reference (who you spoke to):

.....
.....
.....
.....

Date / /

Time:

Lender Reference (who you spoke to):

.....
.....
.....
.....

Date / /

Time:

Lender Reference (who you spoke to):

.....
.....
.....

7

What can I do if the lender says “no” to a repayment arrangement?

This chapter covers:

- If the lender says “no” to your proposed repayment arrangement or does not respond
- The lender said “yes” to your original proposal but you still need more time
- You agreed to a repayment arrangement you could not afford and are now missing payments again

1. If the lender says “no” to your proposed repayment arrangement or does not respond

You have two options, if the lender says no or doesn’t respond:

- Continue to try and negotiate with your lender (only do this if the lender is NOT proceeding with any legal action)
- Lodge a dispute with a dispute resolution scheme

You must lodge a dispute with the dispute resolution scheme before the lender obtains a court judgment. So if you think that may happen soon you should immediately lodge a dispute in a dispute resolution scheme.

If you have filed a defence in court you can still lodge a dispute with a dispute resolution scheme as long as you have not taken a (significant) step beyond filing the defence.

All lenders have a process in place to cover when a person gets behind on their home loan. The main problem you will face is trying to stop that process. It is very common for lenders to commence legal proceedings while you are trying to make a repayment arrangement. You cannot afford to ignore the enforcement steps the lender is taking. See Chapter 3 for the enforcement process.

2. The lender said “yes” to your original proposal but you still need more time

It is definitely worth trying to make another repayment arrangement. Lenders are often very large organisations where it can take some time to find someone who is reasonable and has the authority to agree to your proposed repayment arrangement. Be persistent.

Most large lenders have a hardship team. Find them. Try calling the dispute resolution contact for the lender. You can find those details by going online to (or calling) the relevant dispute resolution scheme. See Chapter 14 for contact details.

Make sure you are making regular repayments of an amount you can afford so the lender can see you are trying to pay the mortgage and can keep to regular repayments.

3. You agreed to a repayment arrangement you could not afford and are now missing payments again

Lenders often ask you to make repayments that are more than you can afford. If you felt pressured into making a repayment arrangement you could not afford you need to go back to the lender and say this. Tell the lender the original repayment arrangement was unsuitable and it needs to be changed.

What if my lender is not a member of a dispute resolution scheme?

If your lender stopped making loans before 1 July 2010, they are not required to be a member of a dispute resolution scheme. If this applies to your situation, you will need to make an application to the Court if your lender does not agree to a repayment arrangement. There are forms for this purpose in Chapter 13 but it is recommended that you get legal advice if possible before lodging an application with the Court. If your loan is over a certain amount you may not be able to go to court. Always check whether your lender is a member of a dispute resolution scheme before taking this step.

Lodging a dispute in a dispute resolution scheme

There are three parts to this process:

1. Lodging your dispute
2. Conciliation/settlement negotiations
3. Determination

Lodging your dispute

You can lodge by either:

1. Filling in an online application form at www.fos.org.au or www.cosl.com.au
2. Printing out an application form from www.fos.org.au or www.cosl.com.au and faxing it or mailing it to the relevant dispute resolution scheme
3. Calling the dispute resolution scheme and asking them to send you a form to complete
4. If you have a disability or you will have difficulty completing the application ask the dispute resolution scheme to complete the application over the phone

5. If you need an interpreter, the scheme will organise a telephone interpreter for you for free

A sample of the main information required to apply to a dispute resolution scheme

If you are having problems completing the form either contact the dispute resolution scheme or get advice.

The application form requires you to outline your complaint/dispute and what result you want. You can choose one of the following options to complete those sections of the form. If your situation is not covered below, get advice.

Dispute/complaint details

Delete the options that are not applicable:

1. I applied for a hardship arrangement with (*name of the lender*) and an arrangement was made for (*number of months*) months. That arrangement was inappropriate for my financial hardship and I want a more appropriate arrangement.
2. I applied to (*name of lender*) for a variation of my home loan on grounds of hardship on / / . A copy of that letter is attached.
3. I applied to (*name of lender*) for a variation of my home loan on grounds of hardship by telephone on / / (and / /) . Give details of conversation(s).
4. I received a **Statement of Claim** or **Summons** on / / , a copy of which is attached. I am applying urgently to (*name of lender*) for a variation of my home loan on the grounds of hardship and a copy of a letter to be sent to (*name of lender*) is attached.
5. I received a **Statement of Claim** or **Summons** on / / , a copy of which is attached. I contacted (*name of lender*) on / / to request a repayment arrangement because I am in financial hardship.

Delete the options that are not applicable:

1. I received a reply from the (*name of lender*) on / / , rejecting the application, a copy of which is attached.

OR

2. I have not yet received a reply from (*name of lender*).

Fair and reasonable resolution of the dispute requested

I request the following resolution of my dispute:

Delete the options that are not applicable:

1. A change in repayments:
 - a. repayments reduced to \$ per fortnight. The change is requested for (number of months) months. After that time, I/we will return to making the normal scheduled repayments. The term of the loan is extended and the arrears are added to the loan; OR
 - b. repayments reduced to nil. The change is requested for 3 months. After that time, if I am still unwell/unemployed, I seek a review of the arrangement to consider whether it needs to be extended. The term of the loan is extended and the arrears are added to the loan; OR
 - c. repayments reduced to \$ per fortnight. The change is requested for 6 months to give me time to exchange an unconditional sale contract for the sale of my/our home.
2. A refund of any default fees and interest charged since the date I reasonably made a hardship notice.
3. No default listing on my credit report.

Conciliation conferences

Once you have lodged a dispute with a dispute resolution scheme you may be asked to:

- complete a statement of financial position
- attend a telephone conciliation conference with your lender

Statement of Financial Position

If you need help completing the financial statement of position get help from a financial counsellor. (see page 23 for information on completing a financial statement).

•↔ Remember

The dispute resolution scheme will look at the statement of financial position when conciliating (and eventually determining) your financial hardship dispute. So it is important that the statement of financial position is accurate. If you are having trouble working out your living expenses then make a note of this on the form.

Telephone conciliation conference

A conciliation conference is simply a conversation between you, your lender and an independent person from the dispute resolution scheme. The person from the dispute resolution scheme will talk to both parties to understand the issues. A telephone conciliation conference is an opportunity for you and the lender to negotiate a repayment arrangement.

You must attend the telephone conciliation conference. Do not agree to a time for the conference that you may not be able to attend. If something happens and you cannot attend a telephone conciliation conference, ring the dispute resolution scheme as soon as possible and reschedule the conference.

Information on the telephone conciliation conference can be obtained at www.fos.org.au or www.cosl.com.au

Some guidelines to remember when you are at the conciliation conference:

1. Get advice before the conciliation conference to discuss what a realistic outcome from the settlement should be.
2. Remain calm. Try not to take anything personally; just concentrate on getting an arrangement that suits you.
3. You **do not** have to come to an agreement at the conference. If you do not agree, the dispute resolution scheme still has the power to determine your financial hardship dispute.
4. Do **NOT** agree to an arrangement that is:
 - a. Not affordable
 - b. Requires the payment of a lump sum you are not sure you can get
 - c. Is not long enough or the lender won't agree to review it after an initial period, if needed
 - d. Requires you to agree to a court judgment
 - e. Does not cover what will happen at the end of the agreed period of lower repayments/no repayments
 - f. Is just generally unsuitable
5. Make sure your settlement is a workable arrangement. See next page for a checklist to use.

Settlement checklist

This checklist is a guide to what your agreed hardship arrangement should cover.

- An agreed repayment arrangement. Some examples are:
 - Repayments of \$ per fortnight/month for 6 months with the term of the loan extended and the arrears added to the loan. After 6 months return to the normal scheduled repayments.
 - return to making the normal scheduled loan repayments of \$ per fortnight/month on (date) with the term of the loan extended and the arrears added to the loan.
 - make no repayments for 4 months and then return to making the normal scheduled loan repayments with the term of the loan extended and the arrears added to the loan.
 - make reduced repayments or no repayments for 5 months, then make higher repayments with the arrears added to the loan with the loan term remaining unchanged.
 - make reduced repayments of \$ per fortnight until the loan is repaid. The term of the loan is extended. (Only for small home loans and the repayments must repay the loan within a reasonable term.)
- Does the repayment arrangement need to be reviewed? If you are unemployed or ill then you may not know when you can return to work. In this situation you should make it clear that the agreement is for an initial period and is subject to review and a request for an extension of the arrangement. **Remember:** this will not be able to continue indefinitely.
- What happens at the end of the reduced repayment arrangement? You should request that any arrears (the amount you are behind

in repayments) be added to the loan and the term of the loan is extended. Lenders often ask for you to:

- Make higher repayments to repay the arrears over time—make sure to ask how much higher repayments will be!
- Pay the arrears in full



Do not agree to this unless you are sure you can do it and insist that the lender agrees to notify you about what the new higher repayments will be at the end of the reduced repayment arrangement.

- If you need time to sell your home (see Chapter 8), you will need a reduced repayment arrangement until your home is sold.
- Your credit report. Request that any default listing on your credit report is removed (if a listing has been made). This won't always be possible, but it is always worth asking, particularly if your lender should have known you were experiencing financial hardship when they made the listing.
- Legal costs and default fees. If you have requested financial hardship previously and the lender did not respond reasonably, then you should ask for all legal costs and default fees to be refunded back to the date of your request.
- If a Statement of Claim/Summons has been issued (see Chapter 9), ask the lender to discontinue the Statement of Claim or Summons. This means that the lender withdraws the court proceedings.



Do not agree to the lender getting judgment without getting legal advice.

Determination

If you and the lender cannot come to an agreement the dispute resolution scheme can determine the matter. In making a determination the following will be considered:

- Are you in hardship because of unemployment, illness or other reasonable cause?
- Have you demonstrated that you cannot meet your regular repayments now as a result of hardship?
- Are you likely to be able to meet the new repayment arrangement requested?
- Will you get back on track and pay out the whole loan within a reasonable time?
- What assistance has the lender offered you?

If the dispute resolution scheme has told you that your matter will now go to Determination, or is pressuring you to settle or drop your dispute, get advice immediately.

8

Do I need to consider selling my home?

This is the hardest decision. You need to consider selling your home when:

- You cannot afford your loan repayments and
- You will be unable to afford your loan repayments for some years to come

You need to make this decision as early as possible because: **it is better to sell your home yourself rather than have the lender sell the home for you. You are more likely to get a better price for your home and avoid lots of legal costs if you sell your own home.**

The decision whether to sell your home is most difficult when:

1. You are unemployed and trying to get a job, or
2. You are ill and trying to get well but you just don't know when you will be sufficiently recovered, or
3. You are waiting for a compensation payment.

In these situations you are hoping that you can make the loan repayments soon but you don't know when this will happen. The difficulty is that as time goes on things are going to get worse and you will get further and further behind on your loan repayments and incur lots of extra interest.

In these circumstances, it is recommended that you:

1. Make a repayment arrangement with the lender for up to 6 months;
2. If by the end of the 6 months you still cannot make the loan repayments, you should put your home on the market;

3. Go back to the lender and negotiate a further arrangement on the basis that you are selling your home.

↔ Remember

If you get a job, get well or get a large lump sum of money before your home sells, you still have the option of trying to negotiate a further arrangement on the basis you can now pay the loan although this will be more difficult if the lender has obtained a court judgement.

By when do I have to make a decision?

You need to make a decision to sell your home as early as possible and preferably BEFORE the lender commences any legal proceedings. It is never too late to ask for time to sell, but the lender is less likely to agree later in the enforcement process and enforcement costs will be added to your loan as the legal proceedings progress.

You should consider putting your house for sale when you ask for hardship. You can always withdraw your home for sale if your situation improves.

You need to give yourself as much time as possible to sell your home and get a good price for it.

I've decided to sell my home. What do I do now?

Step 1

You need to place your home on the market. You need to price the home realistically so that it will sell but for the best price possible in the circumstances. If you are using a real estate agent you should explain what time frame you need to sell the home within. This will usually be under 6 months but could be under 3 months depending on what arrangement you make with your lender.

Step 2

You need to give copies of evidence that you are selling your home to the lender. This evidence should include (where available):

- a. A copy of the contract with your real estate agent
- b. Evidence that you are advertising your home
- c. The front page of the contract of sale
- d. Your marketing plan for selling the home

Step 3

Negotiate a repayment arrangement on the grounds of financial hardship with your lender. See Chapter 5.

You are negotiating the arrangement on the basis that:

- a. You are in financial hardship
- b. You can make regular repayments of what you can afford until the home is sold
- c. You have a reasonable time to exchange contracts for the sale of your home (ask for 6 months but you may need to consider agreeing to 3 to 4 months)
- d. When the home is sold your loan will be repaid.

Step 4

If you sell the house you need to notify the lender as soon as possible and provide evidence of the sale.



You should lodge a dispute with a dispute resolution scheme immediately if:

- you are unable to make a repayment arrangement with the lender or
- the lender is threatening to commence legal action or
- the lender has issued you with a Statement of Claim or Summons but has not obtained a court judgment
- You have lodged a defence in court but have not taken a (significant) step beyond that. (If in doubt, lodge your dispute in a dispute resolution scheme anyway, then get advice).



Remember

Dispute resolution schemes are free and lodging stops all legal action while the scheme considers your hardship dispute.

What if my home is worth less than the amount of my loan?

If you think your home may be worth less than the amount you owe on your home loan, get legal advice.



9

The lender has taken action against me in court

If you receive a Court document titled a Statement of Claim, Summons or a Writ then the lender may be taking legal action for:

- The whole debt and/or
- The arrears (the amount you are behind in repayments) and/or
- Possession of your home

You can tell you have received a Statement of Claim, Summons or Writ because:

1. It will have a stamp from the Court on the document
2. It will have the lender's details and your details
3. It will be titled Statement of Claim, Summons or Writ
4. It will have details of the mortgage and that you failed to make certain payments as required under the loan
5. It will tell you how long you have to respond to the Statement of Claim, Summons or Writ

If you are unsure whether you have received a Statement of Claim or Summons get legal advice.



You only have a short period to respond to a Statement of Claim, Summons or Writ—between 7 and 28 days (depending on where you live in Australia) to respond. If you do not respond within the required time then the lender can apply to the Court for judgment for possession of your home.

When you get a Statement of Claim, Summons or Writ you have 3 options:

1. Lodge a dispute with a dispute resolution scheme arguing you are in financial hardship
2. Lodge a defence and cross claim in Court arguing you are in financial hardship
3. Do nothing (not recommended)



It is strongly recommended you proceed with option 1 – which is to lodge a dispute with a dispute resolution scheme rather than options 2 or 3.

A dispute resolution scheme is free and the lender cannot proceed to judgment while the dispute resolution scheme is considering your financial hardship dispute. You should only consider option 2 of lodging a defence and cross claim if you were not successful at the dispute resolution scheme or cannot use a dispute resolution scheme (for example, because your lender is not a member or a third party involved in causing you loss is not a member).

Lodging a dispute with a dispute resolution scheme

See Chapter 7 for details on how to lodge a dispute with a dispute resolution scheme. If you are lodging a dispute with a dispute resolution scheme **after** you have received a Statement of Claim or Summons you need to:

- Make sure the dispute resolution scheme know you have received a court document. You should note this on your dispute/complaint form.
- The court document will tell you how long you have to respond.
- Lodge a dispute with the dispute resolution scheme as soon as possible after you received the Statement of Claim, Summons or Writ. You will not be able to lodge in the dispute resolution scheme

after the lender has got judgment so you need to move fast to make sure you are in the dispute resolution scheme well before the lender can apply for judgment.

- If you are close to the deadline to file a response to the Statement of Claim, Summons or Writ you should also call the dispute resolution scheme to make sure it has received your dispute/complaint and has told the lender that it has received your dispute/complaint.
- Even if you are negotiating with the lender you need to lodge a dispute with a dispute resolution scheme just to make sure the lender does not get judgment while you work out an arrangement.

Filing a defence and cross claim in court



This should only be considered if you cannot go to a dispute resolution scheme or you have been unsuccessful in a dispute resolution scheme. If your loan is over a certain amount you may not be able to go to court. You should get legal advice before filing in the Court.

A court defence and cross claim needs to be tailored for your own case. Not all States/Territories have a cross claim. If there is no cross claim incorporate the cross claim into the defence. Get legal advice on your situation!

Remember

Going to court is risky! If you lose you will usually be ordered by the Court to pay the legal costs of the lender.

Sample defence and cross claim

A sample of the main facts you need to consider putting in a defence and cross claim appears in Chapter 13. The court forms you need to use will vary. A guide on what forms to use in each State and where to find those forms can be found in Chapter 13.

Checklist

Things you need to do if filing a defence and cross claim:

- Get legal advice. Make sure you have a reasonable chance of success.
- The defence and cross claim should be lodged before the time given to respond to the Statement of Claim, Summons or Writ expires. It must be lodged before the lender gets a judgment from the Court. The lender's solicitors may agree to give you more time to file a defence and cross claim. In that case, you must lodge your defence and cross claim by that date.
- You must lodge the defence and cross claim at the relevant court. For example, if you were issued with a Statement of Claim from the NSW Supreme Court you need to file your defence and cross claim at the NSW Supreme Court.
- There may be a filing fee payable. Ring the Court and see if you can get the fee waived or postponed. If you cannot afford the fee and the Court will not waive or postpone the fee get urgent legal advice.
- You must send a copy of any defence and cross claim that has been stamped by the Court to the lender's solicitor.



10 Getting your superannuation

You may be able get access to your superannuation when you are behind on your home loan. **Certain conditions apply and there is no guarantee you will be successful in your application to get access to your superannuation.**

Dos and Don'ts

DO

- ✓ Negotiate a financial hardship arrangement with your lender or through a dispute resolution scheme (see Chapters 6 and 7)
- ✓ Get advice on whether accessing your superannuation is advisable in your situation.

DON'T

- x Rely on getting your superannuation to solve all your problems
- x Access your superannuation when you need to sell your home anyway (see Chapter 8)
- x Negotiate a repayment arrangement that depends on getting your superannuation (as it may not happen)
- x Think that the lender will not proceed with legal action because you are accessing your superannuation



Your superannuation is usually protected from bankruptcy until it has been withdrawn from your super fund. If you owe more in debts than your house is worth, you should think seriously about leaving your superannuation in your superannuation fund so that it will be protected in the event that your house is sold for a significant shortfall and you end up bankrupt.

The amount you can withdraw is generally limited to the amount equal to 3 months mortgage repayments and 12 months interest.

You also need to pay tax on any amount you withdraw, reducing the amount available to pay the mortgage.

Accessing your super

1. Get an application form to access your superannuation from the Centrelink website at www.humanservices.gov.au and search for early release of superannuation.
2. Complete the application form.
3. Contact your lender to get them to confirm the following in writing to the Department of Human Services (DHS):
 - a. That the lender “will exercise power of sale” over the mortgaged property or “will foreclose”, unless the arrears amount is paid by a given date
 - b. The address of the property in arrears
 - c. The amount of the arrears owing
 - d. The amount that is equal to 3 months of repayments under the mortgage
 - e. The amount that is equal to 12 months interest on the outstanding balance of the mortgage, at the time the

document was prepared

- f. The name of the lender and the account number
- g. That the lender will not exercise their power of sale if the arrears are paid by a given date

You will need to pay tax on any amount you withdraw, reducing the amount available to pay the mortgage.

Some problems that may occur when trying to access your superannuation:

- The lender will not agree
- The lender agrees not to exercise its power of sale by a certain date but your superannuation is not released by that date
- DHS will not approve the release
- There is a delay in DHS processing your application
- There is a delay by the lender in giving the required information and confirmation
- A delay means that the amount released is not enough to cover your arrears

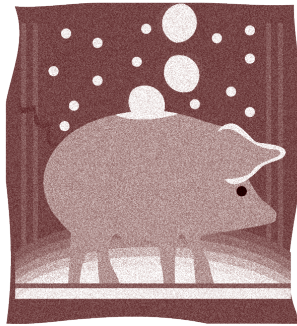
➡ **Remember**

The best way to avoid problems with getting your superannuation is to make a hardship arrangement that does not depend on successfully accessing your superannuation.

This chapter has explained the basis for accessing your superannuation in order to prevent your home being repossessed. There are other grounds that may apply, for example:

- You have been receiving Centrelink payments for over 6 months; and/or
- You have medical grounds for accessing your superannuation including illness or to care for someone who is ill.

See www.humanservices.gov.au and search for early release of superannuation.



11 Mortgage assistance

The government provides assistance to eligible low-income families so they can buy and maintain their homes. Mortgage assistance is available in The Australian Capital Territory, Victoria and Queensland. The eligibility requirements and types of assistance offered vary widely between jurisdictions as detailed below.

Australian Capital Territory

Administered by:

ACT Revenue Office. To get an application form go to www.revenue.act.gov.au/ and then click on *Home Buyer Assistance > Mortgage Relief* or call 02 6207 0028.

Amount available

The maximum amount payable for an approved mortgage relief loan is \$10,000. The loan can only be used as payment towards arrears on the mortgage or a combination of arrears and future mortgage payments (arrears capped at \$5,000).

Key eligibility criteria

- Recent and unforeseen change in circumstance which has led to short term mortgage stress; and
- Must be an owner-occupier; and
- Cannot own any other interest in property anywhere, including those held under a trust; and
- Minimum of 10% equity in your home to provide security for any assistance given; and

- Total value of the property must not exceed the median house price in the ACT applicable (currently \$535,000). This figure is based on the actual sales data from the ACT Planning and Land Authority and is updated every 6 months to reflect the current housing market; and
- Be able to demonstrate that you have contributed some funding towards current mortgage repayments in the 6 months before making an application; and
- Have proof of current home insurance—Certificate of Current Insurance.

Repayment arrangements

A mortgage relief loan, if approved:

- will be paid directly to the applicant's home loan account at the relevant lending institution; and
- will be repayable over a 5 year period, with repayment of the loan to commence 6 months after the funds have been provided to the applicant's relevant lending institution; and
- will be interest free; and
- will be secured by way of a caveat over the property for which the mortgage relief loan is sought.
- Immediate repayment of a mortgage relief loan is required in the event of the sale of the property, refinance or renegotiation of the mortgage on the property.

Victoria

Administered by:

Housing and Community Building, Department of Human Services, please call (1800 134 872) or visit www.housing.vic.gov.au then click on the link *Home Owners Support > Mortgage Relief* to find out more.

Amount available

1. An interest free loan to assist with the portion of the loan repayments that exceed more than 27% of gross income.
2. An interest free loan to a maximum of \$7000 to assist with repayment arrears. Initial assistance is for 12 months with the potential to extend for a further 12 months.

Key eligibility criteria

- Original loan must not have exceeded \$445,500; and
- Money borrowed must have been spent on purchase or construction; and
- Total of housing loan and assistance advance must not exceed 95% of property valuation; and
- Loan not a vendor's term contract or provided by private individual; and
- Must be principal residence; and
- Loan repayments must exceed 27% of gross income; and
- Difficulties caused by unavoidable change in circumstances; and
- Must have capacity to recommence loan repayments once assistance ceases; and
- NOT available if the house is on the market or subject to a property settlement agreement; and
- Written application form, including information and certification from lender.

Repayment arrangements

When assistance ceases you will be expected to start making full loan payments and to start repaying the loan assistance granted. Repayments can be lump sum, or monthly instalments. No maximum term specified, although sale or refinance triggers requirement to repay in full. Interest secured by mortgage in favour of Director of Housing.

Queensland

Administered by:

Department of Housing, please call 1300 654 322 or visit www.qld.gov.au then click on *For Queenslanders > homes and housing > financial help and concessions > mortgage relief loans* to find out more.

Amount available

Interest free loan to a maximum of \$20,000, paid directly to home lender, to clear arrears and to subsidise repayments for a period of up to 6 months.

Key eligibility criteria

- The mortgage balance must be less than \$500,000; and
- There must be sufficient equity in the home to secure the assistance provided; and
- Must be principal place of residence and cannot own additional property; and
- Must be in financial difficulty, in danger of losing home and the change in circumstances must have caused the level of payments required to exceed 30% of gross household income; and
- Must have taken all reasonable steps to meet liabilities and have been making loan repayments more than 30% of gross household income; and

- Written application form, including information and certification from lender.

Repayment arrangements

- You will be contacted 12 months after the loan is provided to arrange for monthly payments to commence.
- The maximum term is 10 years.
- Repayment in full is required on sale of home or refinance or renegotiation of loan. Interest secured by registered mortgage to Department of Housing.



12

Getting a stay of an eviction from the Court

This chapter deals with the situation when:

1. A court judgment has been given for the possession of your home
2. You do not have a reasonable chance of arguing the judgment should be set aside. Judgments can be set aside where you have an arguable defence (such as circumstances described in Chapter 4) and can explain your delay. Get legal advice if you are unsure.
3. You need more time to:
 - a. Refinance your loan
 - b. Sell your home
 - c. Move out of home



After a court judgment has been granted to the lender you cannot lodge a dispute with a dispute resolution scheme on the grounds of financial hardship.

You can lodge in the Credit Ombudsman Service Ltd (if your lender is a member) to ***get assistance to negotiate more time to sell or more time to refinance or more time*** to move out of your home after judgment. If your lender is a member of the Financial Ombudsman Service you cannot lodge a dispute after judgment unless the lender agrees.

Repayment arrangements after judgment

After the lender has judgment you can still try to negotiate a repayment arrangement with the lender. If the lender agrees to a repayment arrangement make sure the arrangement is confirmed in writing!



If you make a repayment arrangement after the court has granted judgment, the lender can apply immediately to get possession of your home if you miss a payment even by a day or you are a few cents short.

How to get a stay of an eviction

The Court will sometimes order that an eviction be 'stayed.' This means that your eviction from your home will be placed on hold until a later date, or until the Court lifts the stay.

It is difficult to get a long term stay of an eviction. This process is mainly used to get a stay for a few weeks (or less commonly months).

Step 1

Try to get the lender to agree to a stay. In this situation the lender will arrange for the process of taking possession of your home to stop. The lender will usually agree to a stay if:

- You have sold your home and you are just waiting for the settlement date to occur
- You have approval for a refinance of your home loan and you just need time to complete that process
- You need extra time to move out due to a medical condition or you have another good reason why you are delayed in finding alternative accommodation

Step 2

If the lender will not agree you need to apply to the Court. How you apply and what you need to do will depend on which State or Territory you live in. Chapter 13 sets out sample letters. In all cases you need to complete an affidavit. This is a statement that sets out your circumstances; you have to swear or affirm that the statement is true. A draft affidavit is set out in Chapter 13. You should also attach any evidence you have to support your stay. If possible you should seek legal advice about these documents.

As a general rule the Court will consider temporarily stopping a possession order on your property for the same reasons as listed above in Step 1. As the Court can decide as it sees fit, your chances of success may vary. It is important to be ready to move out if you are unsuccessful in applying to the Court for a stay.



13 Sample letters and forms

Sample letter requesting a repayment arrangement

Please delete those parts of the sample letter that do not apply to your circumstances.

Manager

Use contact details for the lender at www.fos.org.au or www.cosl.com.au.

.....
Dear Manager,

Re: Hardship notice

Loan account no:

I/we wish to apply for a variation of the above loan contract on the grounds of hardship under section 72 of the National Credit Code.

Change requested

I/we request the following change to my/our contract:

- a reduction in the amount of each repayment to \$ per fortnight/month. This change is requested for (number of months) months. After this time I/we will return to making the normal scheduled repayments. The term of the loan to be extended and any arrears to be added to the loan. OR
- no repayments for 3 months with my circumstances to be reviewed at the end of this period to discuss if a further extension of time is needed. After the agreed period, I/we return to making the normal scheduled repayments, the term of the loan is extended and the arrears added to the loan. OR

- I/we continue making scheduled repayments and any arrears accumulated during my/our recent period of financial hardship are added to the loan and the term of the loan extended. OR
- no repayments or reduced repayments of \$ per month for (number of months) months to exchange an unconditional sale contract on my/our home.

I/ we assume that you will not continue to charge default fees, default interest or make an adverse listing on my/our credit report while my/our hardship request is being considered.

Supporting information

I/we confirm that my/our financial hardship was caused by illness, unemployment or other reasonable cause (delete if not applicable). Give brief details.

I/we expect to be able to reasonably repay the loan if the requested variation is granted. I/we will be able to pay because (delete if not applicable):

- when I return to work I will be able to afford the scheduled repayments
- when I have recovered from my illness I can return to work and can afford the scheduled repayments.
- the loan will be repaid from the sale of my home

Please send me/us a Financial Statement of Position to complete, if required.

I/we await your reply in writing within 21 days of the date of this letter.

Yours faithfully

Name

Address

.....

Application for Financial Hardship to the Federal Magistrates Court

Note : If the lender has commenced proceedings in another court you need to lodge a dispute with a dispute resolution scheme or the Court where the lender commenced proceedings. The sample form below is to be used only when no court proceedings have been commenced against you.

You would usually only use this form if your lender is not in a dispute resolution scheme (see page 27) or you have been unsuccessful in a dispute resolution scheme.

Instructions for completion

APPLICATION – General Federal Law

1. This form is used for commencing a general federal law proceeding where no other form of application is applicable under the *Federal Magistrates Court Rules 2001* (the Rules).
2. Do not use this form if your application relates to family law, child support or matters arising under the *Bankruptcy Act 1966*, *Administrative Decisions (Judicial Review) Act 1977* or *Migration Act 1958*. Ask registry staff for appropriate forms in these jurisdictions.
3. You must complete address for service details in the footer on page 1. All correspondence concerning the application will be sent to the mailing address inserted and all documents in the proceedings will be deemed to have been served on you if posted to that address. If your address details change, you must file a notice of address for service within seven days, and serve a copy on all other parties; see Rule 6.02.
4. You must insert the name/s and address/es of each respondent in the ‘Important Notice to Respondent/s’ box at the end of the form.
5. The grounds of the application must explain briefly the basis on which the orders are sought. Alternatively, you may file a pleading

by way of a statement of claim or points of claim. Such a pleading should comply with Orders 11 and 12 of the *Federal Court Rules*. It should identify in summary form the material facts on which you rely, but not the evidence by which those facts are to be proved. All necessary particulars must be given, including any claim of fraud, misrepresentation, breach of trust, wilful default, undue influence and damages.

6. The evidence supporting this application must be provided by affidavit/s filed with this application; see Subrule 4.05(1). The affidavit must include a full narrative of all facts, matters and circumstances, including documentary evidence, upon which you rely. However, an affidavit is not required in certain circumstances; see Subrule 4.05(2).
7. Unless the Court orders otherwise, an application and other documents filed with it may not be served less than seven days before the day fixed for the hearing of the application; see Rule 6.19. Service must be by hand, unless the Rules allow otherwise or the court otherwise orders. The application and other documents must be served on each party and the person against whom orders are sought if that person is not a party.
8. If your application is for interlocutory, interim or procedural orders in a proceeding which has already commenced, you should use the Application in a Case form.
9. If you are completing this application by hand and you need more space in any section, attach extra page/s as required.
10. Once complete, you need to file the original and a copy of this application for each party to the matter with the court registry. The Court will keep the original and return the sealed copies to you. You will need to serve a copy on the other party or parties and keep a copy for your records.

Remove this instruction sheet before filing

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA**

File number

REGISTRY: (eg Sydney)

..... (Name)

Applicant

..... (Name of credit provider)

Respondent

** Repeat as necessary for additional parties*

APPLICATION—General Federal Law

Type of application

This application is commenced in the court’s jurisdiction under the
(specify Act or Acts):

National Consumer Credit Protection Act 2009

First court date

This application is listed for hearing at (court location):

.....

Court date and time (registry staff to insert): at am/pm.

All parties or their legal representatives should attend this hearing. Default orders may be made if any party fails to attend. The court may hear and determine all interlocutory or final issues, or may give directions for the future conduct of the proceeding.

.....
(for) Registrar

Date:/...../.....

Filed on behalf of (name)

Prepared by Lawyer’s code

Name of law firm

Address for service in Australia

..... State Postcode

Email

DX Tel

Fax Attention

Final orders sought by applicant/s (*state precisely each order sought by way of final relief*)

1. An order pursuant to s74 of the National Credit Code (“the Code”) being Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth) changing the Credit Contract as follows:
 - a) The date for payment of \$#### which fell due on #### is postponed until the date of judgment.
 - b) Any arrears of the Credit Contract as at the date of judgment are capitalised.
 - c) The period of the contract is extended for a term of thirty (30) years commencing on the date of judgment during which the defendant is to pay the amount due on the contract as at the date of judgment together with interest thereon by monthly instalments without a change being made to the annual percentage rate or rates provided in the contract.
2. Such further or other order as the court thinks fit.

Grounds of application (*state briefly the grounds of the application*)

1. The Applicants are the registered proprietors of and reside at the property in Certificate of Title Folio Identifier [**number on certificate of title**] also known as [**address**] (“the home”).
2. On or about [date of loan] the Respondent, in the course of its business, pursuant to an agreement between the Applicants and the Respondent (“the Credit Contract”) gave the Applicants a loan (“the Loan”) secured by a mortgage over the home (“the Mortgage”).
3. The Loan was obtained by the Applicants wholly or predominantly for their personal, household or domestic purposes [**(or, if applicable, and the credit contract was entered after 30 June 2010) for the purpose of purchasing, renovating or improving residential property for investment purposes**].

4. In the premises the National Credit Code (“the Code”) applies to the Credit Contract and Mortgage.
5. The Applicants are unable reasonably because of [**state which of illness or unemployment or other reasonable cause applies (if other reasonable cause, state the reason)**] to discharge their obligations under the Credit Contract.

Particulars

- a) [the details, including dates, of your illness, unemployment or other reasonable cause which is the basis of your application.]
6. The Applicants reasonably expect to be able to discharge their obligations under the Credit Contract if the terms of the Credit Contract were changed in the manner provided for in s72(2)(c) of the Code.

Particulars

- a) [**details of arrears, including the total amount; details of payments of the arrears, including dates; the present payment arrangement.**]
- b) [**details of income and expected means of repaying the loan**]
7. The Applicants have applied to the Respondent for the Credit Contract to be changed in accordance with s72 of the Code and the Respondent has failed or refused to change the Credit Contract in accordance with the application.

Particulars

- a) Written application to the Respondent on or about [date].
- b) Letter of rejection dated about [date] [**(Alternatively) The Respondent did not reply to the letter within 21 days.**]
8. In the premises, the Court may change the terms of the Credit Contract pursuant to s74 of the Code.

Interlocutory, interim or procedural orders sought by applicant/s
(complete only if interlocutory, interim or procedural orders are sought)

1. A stay of enforcement proceedings pending the determination of the Application.
2. The small claims procedure under the *National Consumer Credit Protection Act 2009* apply to the proceedings.

Signature of applicant/s or lawyer

.....
Signed by (print name/s)

.....
 the applicant/s or lawyer for the applicant/s

Date:/...../.....

<p>IMPORTANT NOTICE TO RESPONDENT/S</p> <p>To the respondent (name):</p> <p>.....</p> <p>of (address):</p> <p>.....</p> <p><i>* If there are two or more respondents, provide details</i></p> <p>.....</p> <p>You should seek legal advice about this application. You may file a response. If you file a response, you must file and serve the response within 14 days of receiving this application. You may also need to file an affidavit; see Rule 4.05 of the <i>Federal Magistrates Court Rules 2001</i>. If you do not file a response, you must file and serve a notice of address for service before the hearing.</p>
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Form approved by the Chief Federal Magistrate for general federal law proceedings pursuant to Subrule 2.04(1A) for the purpose of Subrule 4.01(1) – September 2007

Defence and cross claim

This form is to be used only if the lender has commenced court proceedings against you.

Remember

You should always go to a dispute resolution scheme before filing a defence/cross claim in court (see Chapter 7).

If you are going to court always get legal advice about your case and how to complete the defence.

If you need to lodge urgently and do not have time to get legal advice you should delete points 1 and 3 below and choose not to admit all of the paragraphs in the Statement of Claim or Summons.

All the forms you may need are listed at the end of the sample defence/cross claim.

If there is only one defendant, delete all references to the second defendant.

Defence

1. The First Defendant and Second Defendant admit the allegations in paragraphs [*paragraph numbers*] of the Statement of Claim/Summons.
2. The First Defendant and Second Defendant do not admit the allegations contained in paragraphs [*paragraph numbers*] of the Statement of Claim/Summons.
3. The First Defendant and Second Defendant deny the allegations contained in paragraphs [*paragraph numbers*] of the Statement of Claim/Summons.

4. The First Defendant and Second Defendant say in further answer to the Statement of Claim/Summons that the Mortgage is regulated by the ***National Credit Code*** ("the Code") pursuant to the ***National Consumer Credit Protection Act 2009*** (Cth).
5. In a Statement of Cross Claim filed together with this Defence, the First Defendant and Second Defendant seek changes by the Court to the terms of the Credit Contract under section 74 of the Code.
6. The First Defendant and Second Defendant rely on the matters in the Statement of Cross Claim filed together with this Defence.

Cross Claim

Relief Claimed

1. A stay of enforcement proceedings pending the determination of the Cross-Claim.
2. An order pursuant to s74 of the ***National Credit Code*** ("the Code") being Schedule 1 of the ***National Consumer Credit Protection Act 2009*** (Cth) changing the Credit Contract as follows:
 - a. The date for payment of \$___ which fell due on __/__/__ is postponed until the date of judgment.
 - b. Any arrears of the Credit Contract as at the date of judgment are capitalised.
 - c. The period of the contract is extended for a term of thirty (30) years commencing on the date of judgment during which the defendant is to pay the amount due on the contract as at the date of judgment together with interest thereon by monthly instalments without a change being made to the annual percentage rate or rates provided in the contract.
3. Costs.
4. Such further or other order as the court thinks fit.

Pleadings and Particulars

1. The Cross-Claimants are the registered proprietors of and reside at the property in Certificate of Title Folio Identifier **[number on certificate of title]** also known as **[address]** (“the home”).
2. On or about **[date of loan]** the Cross-Defendant, in the course of its business, pursuant to an agreement between the Cross-Claimants and the Cross-Defendant (“the Credit Contract”) gave the borrowers a loan (“the Loan”) secured by a mortgage over the home (“the Mortgage”).
3. The Loan was obtained by the Cross-Claimants wholly or predominantly for their personal, household or domestic purposes *[(or if applicable and the credit contract was entered after 30 June 2010) for the purpose of purchasing, renovating or improving residential property for investment purposes]*.
4. In the premises the *National Credit Code* (“the Code”) being Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth) applies to the Credit Contract and Mortgage.
5. The Cross Claimants are unable reasonably because of *[state which of illness or unemployment or other reasonable cause applies (if other reasonable cause, state the reason)]* to discharge their obligations under the Credit Contract.

Particulars

- a. *[the details, including dates, of your illness, unemployment or other reasonable cause which is the basis of your application.]*
6. The Cross-Claimants reasonably expect to be able to discharge their obligations under the Credit Contract if the terms of the Credit Contract were changed in the manner provided for in s72(2) (c) of the Code.

Particulars

- a. **[details of arrears, including the total amount; details of payments of the arrears, including dates; the present payment arrangement.]**
 - b. **[details of income and expected means of repaying the loan]**
7. The Cross-Claimants have applied to the Cross-Defendant for the Credit Contract to be changed in accordance with s72 of the Code and the Cross-Defendant has refused to change the Credit Contract in accordance with the application.

Particulars

- a. Written application to the Plaintiff on or about **[date]**.
 - b. Letter of rejection dated about **[date] [(Alternatively) The Plaintiff did not reply to the letter within 21 days]**.
8. In the premises, the Court may change the terms of the Credit Contract pursuant to s74 of the Code.

Forms available at:

New South Wales

1. Form 7B Defence which must be filed within 28 days after service on the defendant of the Statement of Claim
2. Form 9 Cross Claim

The forms are available from: www.ucprforms.lawlink.nsw.gov.au

Northern Territory

To file a defence and/or counter claim you need to complete:

3. Form 8A "Notice of Appearance" which must be filed within 7 days after service of the originating process when it is served within 200km of Darwin or Alice Springs. If an originating process is served elsewhere in the Commonwealth, an appearance must be filed no less than 14 days after service.

The form should be filed at the Registry of the Supreme Court at Darwin or at Alice Springs (depending on where the summons is issued.) Once the form is filed you will be expected to be at Court on the day listed in the summons.

To file your defence and/or cross claim you need to complete:

1. Form 46A Summons
2. Affidavit (setting out your defence)

Forms are available from www.supremecourt.nt.gov.au then click on the link *Going to Court > Forms*

Tasmania

If you decide to defend an application for possession you need to:

1. Complete and file an affidavit/s that sets out all the facts upon which you intend to rely to dispute an order that you give up possession of the property. There is no specific form for the affidavit. However, there are general rules found in the *Supreme Court Rules 2000* (rules 501-513) that are applicable to affidavits.

In summary, the first page of the affidavit should, as for all Court documents, have a title, heading (of the type numbered 3 citing "In the Matter of the Land Titles Act 1980 s 146") and footer as indicated in form 1 of the *Supreme Court Forms Rules 2000*.

Below the required title and heading of the cause the document should state in bold capitals: "**AFFIDAVIT**".

The first sentence of the affidavit should be: "I, *[insert name of person making the affidavit]* of *[insert address and profession of the person making the affidavit]*, make oath and say as follows:"
The information provided in the affidavit should then follow and should be divided into numbered paragraphs. The first paragraph should be: "1. I make this Affidavit in response to the Summons to Show Cause issued on *[date listed on the Summons]*". The affidavit should conclude with the words:

"SWORN by the abovenamed

Deponent at [.....] in Tasmania

[insert signature of deponent]

this

[insert date]

.....
BEFORE ME

[insert signature of witnessing Justice of the Peace]

A Justice of the Peace"

2. Serve a sealed copy of the affidavit on the mortgagee (applicant) whose address for service will appear at the foot of the first page of the Summons to Show Cause received by you.
3. Attend at the Court on the day and at the time shown on the Summons to Show Cause received by you.

Forms can be found at: www.supremecourt.tas.gov.au then click on the link *Practice and Procedure > Forms*

ACT

To file a defence and/or cross claim you need to complete:

1. Form 2.9 Defence and counterclaim which must be filed not later than 28 days after the day the originating claim is served on the defendant.
2. Form 6.11 Affidavit in support.

Forms are available from: www.legislation.act.gov.au then click on *Approved Forms*

Victoria (Supreme Court of Victoria and the County Court)

Defence

There is no prescribed form. Use the originating motion in the forms section as a template.

You have 10 days to file an appearance where the originating process is served in Victoria. You have until 30 days after filing an appearance to serve a defence.

The forms are available from: www.supremecourt.vic.gov.au then click on the link *Forms*

Western Australia

There is no prescribed form for a defence. To lodge a defence you should use the following forms:

1. Form 6—Memorandum of Appearance
2. Affidavit outlining your defence

Form 6 is available on the internet at: www.supremecourt.wa.gov.au then click on the link *Civil Forms > Forms and Fees*

A sample copy of an Affidavit is available in Section 1.2 Registry Documents of the Consolidated Practice Directions, which are available on the internet at: www.supremecourt.wa.gov.au then click on the link *Court Procedure > Consolidated Practice Directions*

Three copies of your defence documents need to be filed with the Supreme Court Registry. You need to sign the originals and have two photocopies of those documents. The Registry will stamp (Seal) each document, keep the original and give one copy for your records and one to be served on the plaintiff. Your defence needs to be served on the plaintiff within 14 days after the Statement of Claim was served on you. Service is effected by pre-paid post or personal delivery to the address of the legal representative on the front of the Statement of Claim.

Queensland

To defend a claim you need to complete two separate forms – which are filed as one document:

1. UCPR Form 6 Notice of Intention to Defend
2. UCPR Form 17 Defence

The Notice of Intention to Defend must have the defendants's defence attached to it. A sealed copy of the Notice of Intention to Defend must be served at the plaintiff's address for service. In a proceeding started by claim, a notice of Intention to Defend must be filed within 28 days after the claim was served. There is no requirement to file an affidavit in support.

To file a defence with a counterclaim:

3. UCPR Form 18

Forms are available from: www.courts.qld.gov.au then click on the link *Forms*

South Australia

1. Form 4 Defence which must be filed within 28 days after the Statement of Claim is served on the defendant.

The form is available from: www.courts.sa.gov.au then click on the link *Forms, Fees and Rules*

Getting a stay of an eviction from Court

Sample affidavit for getting a stay of eviction

Delete the parts that do not apply to your situation.

Affidavit Details

Name	[the person making the affidavit]
Address	[this can be a work or home address]
Occupation	[the person's usual occupation, whether they are employed in it at the time or not]
Date	[the date the affidavit is signed]

I # say on oath/ # affirm: *[the deponent chooses whether to swear or affirm]*

1. I am the defendant *[or 'first defendant', or 'the second defendant', or whatever is appropriate.]*
2. I believe that the information contained in this affidavit is true.
3. On *[insert date]* I received a Notice to Vacate from the NSW Sheriff in relation to my residential home *[if you have a copy insert I attach a copy of the Notice to this affidavit and mark it Annexure A].*
4. I have never received a Notice to Vacate before *[remove if not correct]*
SET OUT THE GROUNDS FOR THE STAY WHICH MAY INCLUDE
[delete where not applicable].

Hardship in relation to moving from the property [include if you need more time because you can't move, you can also name this as an alternative.]

5. I live in the home with *[insert] my children [insert ages, and number]*, my wife/husband.
6. I am not able to find alternative rental accommodation *[insert detail of your attempt to do so]*.
7. I will not have anywhere to go as I have *[no family],[no where to go]*.
8. *[insert any special circumstances that preclude you from moving or attempts you have or will make and how long it will take]*.

Refinance [if you need more time to refinance, include the following type of information]

5. I have received a loan approval from [name of bank, credit union or building society]. Annexed and marked "A".
6. The amount of credit which has been approved being [amount of credit approved] is sufficient to cover the amount owed to the Plaintiff's.
7. The refinance is now only conditional upon [set out the reason why the refinance is been done]. Annexed and marked "B".
8. As such, if I was given [insert time] I will be able to refinance.

Sale of property

5. I seek time to sell the property known as [address of your property] ("the Home") myself.
6. I have placed the home on the market. I attach a copy of the sales Real Estate Agency Agreement. Annexed and marked "A".
7. I have sought the advice from the real estate agents about the potential sale price. I believe that the Home is valued at

approximately \$[insert] to \$[insert]. The Real Estate Agent told me that I will realistically be able to obtain \$[insert] for the Home. The current balance on the mortgage is approximately \$[insert].

9. I have been to a conveyancing solicitor. Contracts for the sale of the property have been drafted. Annexed and marked "B".
10. I believe that I will exchange contracts for the sale of the Home within the next [time you estimate for the exchange to take place]. If I am able to sell the property I can discharge the whole of the debt under the mortgage.

Defence

5. I think I may have a defence, and I am seeking legal advice. I have an appointment with [legal aid] [a private solicitor] about this matter on [insert date]

Forms available to use can be found at:

South Australia

To get a stay you need to complete:

1. Form 7 Notice of Address for Service
2. Form 14 Affidavit

Both forms can be found at: courts.sa.gov.au then click on the link *Forms, Fees and Rules > Practice Directions > Supreme Court > Supreme Court Practice Directions 2006 (part II Forms)*

Queensland

To get a stay you need to complete:

1. UCPR Form 9 Application
2. UCPR Form 46 Affidavit in support

Both forms can be found at: www.courts.qld.gov.au then click on the link *Forms*

Victoria (Supreme Court of Victoria)

To get a stay you need to complete:

1. Form 45A Summons
2. Affidavit in support

These forms can be found below:

Form 45A: www.supremecourt.vic.gov.au then click on the link *Forms*

Affidavit template: www.supremecourt.vic.gov.au then click on the link *Forms*

New South Wales

To get a stay you need to complete:

1. Form 20 Notice of Motion
2. Form 40 Affidavit in support

Both forms can be found at: www.ucprforms.lawlink.nsw.gov.au

ACT

To get a stay you need to complete:

1. Form 6.2 Application in Proceeding
2. Affidavit in support

Both forms can be found at: www.legislation.act.gov.au then click on the link *Approved Forms*

Northern Territory

To get a stay you need to complete:

1. Form 46A Summons

The form can be found at: www.supremecourt.nt.gov.au then click on the link *Going to Court > Civil Jurisdiction*

Tasmania

To get a stay you need to complete:

1. Form 41 interlocutory application

The form can be found at: www.supremecourt.tas.gov.au then click on the link *Practice and Procedure > Forms*

Western Australia

To get a Suspension Order you need to complete:

1. Form 9, Application for a Suspension Order
2. Affidavit in support

Form 9 is available on the website for the Supreme Court of Western Australia at: www.supremecourt.wa.gov.au then click on the link *Forms and Fees > Civil Forms*

A sample copy of an Affidavit is available on page 19 of the Consolidated Practice Directions, which are available on the internet at: www.supremecourt.wa.gov.au then click on the link *Court Procedure > Consolidated Practice Directions*

Codes of Practice

Financial hardship provisions

Codes of Banking Practice

27. Provision of credit

Before we offer, give you or increase an existing, credit facility, we will exercise the care and skill of a diligent and prudent banker in selecting and applying our credit assessment methods and in forming our opinion about your ability to repay the credit facility.

28. If you are experiencing financial difficulties with your credit facility

28.1 This clause 28 applies to a credit facility you have with us.

28.2 With your agreement and co-operation, we will try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan.

28.3 We will deal with you or, at your request, with your authorised financial counsellor or representative where you have given us their correct contact details. If our reasonable attempts to contact or otherwise deal with your financial counsellor or other representative are unsuccessful, we will revert to dealing with you.

28.4 If, in the course of our personal dealings with you, we identify that you may be experiencing difficulties in meeting your repayments under the credit facility, we may decide to contact you and invite you to discuss your situation with us and the options available to assist you in meeting your obligations in these circumstances.

28.5 If, at any time you consider you are, or expect to be, experiencing difficulties in meeting your repayments to us, you should make contact with us as soon as possible to discuss your situation with us and the options available to assist you in meeting your obligations.

- 28.6 We will respond promptly (for example, within the timeframes prescribed by the National Credit Code, if it applies) to any requests for assistance from you, or your authorised representative, in relation to your financial difficulties with a credit facility you have with us. We will take into account the information available to us, including the information you provide to us, about your financial situation in determining whether or not we are able to provide assistance and the nature and extent of any assistance.
- 28.7 If, when you contact us in any of the circumstances described in clauses 28.5 and 28.6 or when you discuss your situation with us as a result of an invitation described in clause 28.4, we think that the hardship provisions of the National Credit Code could apply to your circumstances, we will inform you about them.
- 28.8 We will inform you in writing of our decision whether or not to provide you with any assistance if you are in financial difficulty with a credit facility you have with us and the reasons for our decision. If we agree to provide you with assistance, we will confirm in writing the main details of the arrangements.
- 28.9 We will not:
- (a) require you to apply for early release of your superannuation benefits to repay the whole or any part of your credit facility with us; and
 - (b) recommend that you seek independent advice on the option of applying for early release of your superannuation benefits, for example, from a financial counsellor or financial adviser.

Information on having your superannuation benefits released early is available from the Department of Human Services (www.humanservices.gov.au).

28.10 We will make information about our processes for dealing with customers in financial difficulty with a credit facility available on our website (including relevant contact numbers). We will inform you at your request about how to find this information on our website and we will make this information available in another format if you tell us you do not have access to our website.

28.11 We will take reasonable steps to ensure that relevant staff, who are responsible for dealing with you about your financial difficulties with a credit facility you have with us, are trained in relation to the hardship provisions of this Code and the National Credit Code.

Mortgage and Finance Associations of Australia Code of Practice

13. Hardship Applications

13.1 If a Member becomes aware, or is advised by a Customer, that the Customer is or may be in financial difficulties, the Member will consider in good faith whether it is reasonably appropriate to vary the payment terms of the credit facility, and if it is appropriate, suggest that the Customer contact the Credit Provider and request the Credit Provider to vary the Customer's repayment terms.

13.2 Where appropriate, the Member must:

(a) have regard to the Customer's financial circumstances and consider in good faith and within a reasonable time the Customer's request to vary the payment terms; and

(b) suspend any action to recover any payments due under the Credit and, if it has not listed a default already, not list a credit default in respect of the Credit facility against the Customer until:

i. the Member informs the Customer in writing whether or not it will vary the payment terms; and

- ii. if the Member and the Customer agree to vary the payment terms, the Customer fails to meet the varied payment terms; and
 - (c) encourage the Customer to make payments the Customer can afford pending the Member informing the Customer of its decision; and
 - (d) have a documented policy and procedure in place for receiving and assessing requests to vary credit contracts upon hardship grounds and must provide information about their hardship policy to a Customer on request.
- 13.3 Members must act reasonably in assessing a Customer's request to vary payment terms. Amongst other things, Members must not require the customer to:
- (a) to apply for the early release of any part of the Customer's superannuation entitlements; or
 - (b) the Customer to obtain funds from family members, friends or other third parties;
- prior to the Member considering whether to, or agreeing to, vary the payment terms.
- 13.4 Members who decide to vary the payment terms must promptly and in any case within twenty one calendar days give the Customer written notice setting out particulars of the varied payment terms.
- 13.5 Members who decide not to vary the payment terms must promptly and in any case within twenty one calendar days give the Customer written notice of:
- (a) its decision and the reasons for its decision; and
 - (b) the Customer's right to make a complaint to the Member's IDR and EDR schemes (providing contact details for those schemes) if the Credit falls within the jurisdiction of those schemes.

Customer Owned Banking Code of Practice

24. If you are in financial difficulties

- 24.1. We will work with you in a constructive way if you experience genuine difficulties meeting your financial commitments to us. With your agreement and commitment, we will try to assist you to overcome those difficulties. We will do this whether or not you have a right to seek a hardship variation or change under consumer credit laws.
- 24.2. Without limiting (24.1), we will have procedures in place to ensure we:
- ✓ adhere to hardship variation or change provisions of consumer credit laws
 - ✓ respond promptly to any request or application made to us (we may also initiate contact to discuss your financial situation)
 - ✓ genuinely consider your application or request, taking account of your situation. However, we will only be able to do this if you provide us with the financial information and documents we may reasonably need to assess your situation for ourselves
 - ✓ encourage you to keep making whatever payments you can while we are considering your request
 - ✓ consider longer term as well as short-term financial issues when they are relevant. If you are experiencing longer term difficulties, we will try to develop an appropriate solution with you to allow you to meet your obligations
 - ✓ not list your default on your credit reference file while we are considering your application or request, unless legally required to do so
 - ✓ when you have made an application or request in respect of a debt, not sell that debt to a debt buy-out business while we are still considering the application or request
 - ✓ suggest other options or avenues that may be available to you, if we are unable to agree to your application or request
 - ✓ if we are unable to assist you, advise you promptly in writing, and refer you to a financial counselling or similar service in appropriate cases (subject to availability).

14 Useful contacts

External Dispute Resolution (EDR)

Financial Ombudsman Service

www.fos.org.au

1300 78 08 08

Credit Ombudsman Service

www.cosl.com.au

1800 138 422

MoneySmart

MoneySmart is the Australian Securities and Investments Commission's website on money matters. It has helpful, practical information and videos for people who are struggling to pay their mortgage. moneysmart.gov.au

Financial counselling

Financial Counselling Australia (FCA)

1800 007 007 to contact your nearest financial counsellor

www.financialcounsellingaustralia.org.au

Specialist Credit Law advice—Community Legal Centres

ACT

Consumer Law Centre ACT

www.carefcs.org

(02) 6257 1788

New South Wales

Financial Rights Legal Centre (NSW)

www.financialrights.org.au

Credit and Debt Hotline

1800 007 007

Victoria

Consumer Action Law Centre

www.consumeraction.org.au

1300 881 020

Western Australia

Consumer Credit Legal Service (WA)

www.cclswa.org.au

(08) 9221 7066

Other Community Legal Centres

The National Association of Community Legal Centres

www.naclc.org.au

Legal Aid

New South Wales

1300 888 529 (LawAccess NSW)

www.legalaid.nsw.gov.au

Queensland

1300 651 188

www.legalaid.qld.gov.au

Victoria

1300 792 387

www.legalaid.vic.gov.au

Northern Territory

1800 019 343

www.ntlac.nt.gov.au

ACT

1300 654 314

www.legalaidact.org.au

Tasmania

1300 366 611

www.legalaid.tas.gov.au

South Australia

1300 366 424

www.lsc.sa.gov.au

Western Australia

1300 650 579

www.legalaid.wa.gov.au

Some community legal centres and legal aid offices also employ specialist consumer credit lawyers

Department of Human Services (DHS)

www.humanservices.gov.au

Info line

1300 131 060

Early Release of Superannuation Branch

PO Box 1001

Tuggeranong DC ACT 2901

ERSBenquiries@humanservices.gov.au

Fax: 1800 228 455

Mortgage assistance schemes

Victoria

1800 134 872

www.housing.vic.gov.au then click on the link *Home Owner Support > Mortgage Relief*

Queensland

(07) 3224 7202

Toll Free: 1300 654 322

www.qld.au then click on the links for *Queenslanders > Homes And Housing > Financial Help And Concessions > Mortgage Relief Loan*

ACT

(02) 6207 0084

www.revenue.act.gov.au then click on the link *Home Buyer Assistance > Mortgage Relief*

Supreme Court contacts

New South Wales

Sydney – 1300 679 272

www.supremecourt.lawlink.nsw.gov.au

Northern Territory

Darwin – (08) 8999 7024; Alice Springs – (08) 8951 5711

www.supremecourt.nt.gov.au/

Tasmania

Hobart – (03) 6233 6385

Launceston – (03) 6336 2386

Burnie – (03) 6434 6390

www.supremecourt.tas.gov.au

court@justice.tas.gov.au

ACT

(02) 6207 1786

www.courts.act.gov.au/supreme

Victoria

(03) 9603 9300

www.supremecourt.vic.gov.au

webmaster@supremecourt.vic.gov.au

Western Australia

(08) 9421 5333

www.supremecourt.wa.gov.au

Queensland

Brisbane – (07) 3247 4313 or (07) 3247 4314

www.courts.qld.gov.au

courtinfo@justice.qld.gov.au

Bundaberg – (07) 4131 5667

Courthouse.bundaberg@justice.qld.gov.au

Cairns – (07) 4039 8885

cairnsHCregistry@justice.qld.gov.au

Longreach – (07) 4650 1983

courthouse.longreach@justice.qld.gov.au

Mt Isa – (07) 4747 2011

courthouse.mountisa@justice.qld.gov.au

Roma – (07) 4624 3033

Courthouse.roma@justice.qld.gov.au

Townsville – (07) 4799 7261
townsvilleHCregistry@justice.qld.gov.au

South Australia

(08) 8204 0289
Supreme.registry@courts.sa.gov.au
www.courts.sa.gov.au/OurCourts/SupremeCourt

Emergency Accommodation

New South Wales

Housing NSW

1300 468 746 24 hours 7 days
After Hours Temporary Accommodation Service
1800 152 152 4:30pm – 10pm Mon–Fri
10am –10pm Sat – Sun and Public Holidays

Queensland

Homeless Persons Information

1800 474 753 24 hours 7 days

South Australia

Crisis Care

131 611 4pm – 9am Mon – Fri 24 hours Sat Sun

Northern Territory

Northern Territory Government Switchboard for referral to
emergency accommodation services
(08) 8999 2400 24 hours 7 days

Tasmania

Service Tasmania

1300 135 513 9am – 4:45pm Mon – Fri

ACT

Connections ACT Homelessness Support

1800 176 468 9am – 7pm Mon – Fri , 10am – 1pm Sat

Victoria

Emergency Accommodation Referral Service

1800 825 955 24 hours 7 days

Western Australia

Homeless Advisory and Referral Service

1800 065 892 24 hours 7 days

