



## Factsheet No. 4

### Negotiating with Creditors: What happens when I can't pay?

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If you have to pay off a debt but you can't afford to, it is sometimes best to try to negotiate with the creditor. You might be able to agree on a method of payment that is easier for you. There are a number of different methods of payment that you might be able to suggest as an alternative to paying the full amount in a lump sum (that is in one complete payment). You should be sure of what the alternatives involve and avoid those that you cannot fulfil. You can get help to negotiate and to understand your alternatives.

It is a good idea to put your negotiations in writing and that any agreements between you are also in writing. You should always keep a copy of what has been agreed. Talk to a financial counsellor or a lawyer if you need advice or help with debts and always get independent legal advice before signing any agreement, especially if you are not sure about it.

#### Payment By Instalments

If you can pay small amounts of the debt at regular periods, you might be able to pay by instalments. If you want to pay by instalments make sure that the amount you agree to is affordable and you continue to make the payments when due. If you cannot pay the instalments you agree to pay, the debt recovery process will continue, unless you come to some other arrangement.

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#### Postponement Of Payments

If your inability to pay is only temporary, you should ask for a moratorium (a hold on a debt) for a period. This means that you would not have to pay anything during the period of the moratorium. You will still have to pay when the period is finished. If you ask for a moratorium, it also a good idea to also ask that no interest and fees be charged for that period, otherwise this would make it difficult for you to catch up later. Some creditors would agree to this, but are not required to.



## A Reduced Lump Sum

If you are unlikely to ever have enough money to pay the full amount you owe, you might be able to offer to pay less than the full amount in a lump sum. Some creditors prefer to accept this smaller amount than wait a long time for their money or not get anything at all.

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## Writing off The Debt

If you are suffering a severe hardship and will never be able to pay off any of the debt, due to your special circumstances, you might be able to negotiate to have it written off. You will have to prove that you have a good reason why you will never be able to pay, such as having no money or assets and no chance of that ever changing, because of ongoing and severe health issues.

Note: That is not enough that you do not want to pay the debt, because after you signed the contract you changed your mind. However, if you think you do not owe the money, or if you think the contract has some "unfair" terms, you should get legal advice as soon as possible.

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## Variations To Loans Under the Consumer Credit Code

(see also factsheet [Hardship Variations to Loan Repayments](#)).

If you took out a loan for personal or domestic use (that is not for business or investment purposes), such as to purchase a car, household goods or a home for your own personal use and you are temporarily having trouble making the repayments due for example to the loss of your or your partner's job, or poor health, you can apply for a variation to your loan on the grounds of hardship until you can get back on your feet.

Section 66 of the Consumer Credit Code 1996, specifies what these changes can be. Usually the changes will be for a short time until your situation gets better. These include:

- (a) Extending the term of the contract, and reducing the required payments, which could make them more manageable, or
- (b) Payments can be stopped (postponed) for a specific period of time, or
- (c) Extending the period of the contract and stopping payments for a specific period.

Therefore, if your request is granted, your loan will sometimes be for a longer period than it was



before. You should make your request in writing. There are helpful sample letters you can use, which are available from the [Consumer Credit Legal Centre](#) website.

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If the lender refuses your request for a variation to the loan based on hardship, you can make an application to the Consumer, Trader and Tenancy Tribunal (CTTT in NSW) and ask them to order the variation. The CTTT is like a court but it is more informal than a court and set up so that consumers and parties can represent themselves. The CTTT's orders are binding on parties. If you would like assistance with anything relating to consumer credit, you can get legal advice from a community legal centre or the LEqual Aid Commission of NSW (if you think you may be eligible). Redfern Legal Centre has a specialist Credit and Debt team who can assist you with these kinds of loans. Other solicitors and financial counsellors can also help you. There are also helpful guidelines you can use, which are available from the [Consumer Credit Legal Centre](#) website.

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## Consolidated Loans

Consolidation of loans means that two or more loans are combined together into the same loan, which is then paid off by instalments. These can sometimes be helpful where you would then only make one payment to pay off your debt but sometimes they are not as good as they sound. Sometimes the interest rate is higher and the repayments can be equal to, or even more than you were already paying. Normally, you would have to pay a loan establishment/approval fee. Make sure you seek good financial counseling before you decide to get a consolidated loan. Remember that this may only be a temporary solution and sometimes the terms of the loan will mean greater hardship to you down the track. If the interest rate is higher on your new loan than your old ones, you will end up paying more money in repayments and sometimes over a longer term.

## Pro Rata Payments

When there are many debts, payment of one can mean the others do not get paid. Organising a pro rata payment system where all the debts are paid a bit each month can help this. It needs to be set up properly by agreement with all your creditors. If you think this is the option for you but you are unsure of how to organise it, get a financial counsellor to help.

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This factsheet is no substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre



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