



Debt

This chapter has information for people who have a debt, or who are experiencing financial troubles because of the February 2009 Victorian bushfires. It explains your options and rights and where you can get help.

What if I am having trouble paying my debts because of the bushfires?

What to do first

Tell your creditor about your situation as soon as possible. A creditor is the person or organisation to whom you owe money. You can try to change your repayment plans with the creditor by asking for more time to make payments or to pay back what you owe by instalments. Tell the creditor what you can afford to pay and how much time you think you need. A financial counsellor can help you with this.

Hardship variations

If your debt is a credit card, personal loan or home loan (not a business loan) you may also apply for a 'hardship variation' to change your contract with the creditor. A hardship variation can give you more time to pay (called 'extending the length of a loan'), reduce the amount you are paying with each payment or give you a break from paying anything for a period of time.

If your creditor does not agree to the variation and your debt is less than \$312,400 you may apply to Victorian Civil and Administrative Tribunal (VCAT) for an order to change the terms of the contract. This amount of \$312,400 may change so get legal advice. Contact Consumer Action Law Centre on 1300 881 020 or read their fact sheet How do I change my loans payments if I have suffered hardship on their website at www.consumeraction.org.au/publications/fact-sheets

You can read more about hardship variations on the Consumer Credit Code website www.creditcode.gov.au/

If you have a business debt, you can still try to change your repayment plan with your creditor. A financial counsellor or legal service can help you do this. **See** 'Where to get help'.

Ombudsman and dispute resolution

If you do not want to do a VCAT hardship application, go to your relevant lender dispute resolution scheme. This will be either the Financial Ombudsman Service or the Credit Ombudsman. They will look into the details of your situation, liaise with your creditor and try to work out an agreement between you and the creditor. Both Ombudsman services cover business debts, which VCAT does not. However, people often choose to go through VCAT because it is much quicker.

Contact the Financial Ombudsman Service on its Bushfire and Flooding Disaster Hotline 1800 337 444 to get help and information on financial and insurance issues experienced because of the fires. You can also contact the Credit Ombudsman on 1800 138 422.

Financial counsellors

A financial counsellor can help you work out how to pay back your debt, write up your budget, find out if you can get government grants and liaise with creditors. They can also give you names and numbers of other services which may be helpful, such as contact details for family support, to help overcome gambling or other personal problems.

There will be financial counsellors in many bushfire affected areas. You can also contact Consumer Affairs Victoria on 1300 558 181 to find a financial counsellor near you.

Help from banks and other creditors

Many 'lenders' (the creditor that lent you money in the first place) are offering to stop home loan repayments for up to 12 months or stop fees for bushfire affected people. Creditors should also be offering you hardship variations. Contact your lender for more information on these options and to see what other help they may offer.

As a general rule, lenders should not be offering you a refinance, credit increase or extra loan at this time. These increase your debt. You may have trouble paying back this extra money.

What can the creditor do if I do not pay the debt back?

Going to court

Usually a lender can charge you a higher rate of interest plus legal and enforcement costs and take you to court to sue you for the money you owe them.

If you get a letter of demand from a lender or are served with court documents (for example a 'Complaint' or 'Writ'), get legal help. Contact Bushfire Legal Help or the Federation of Community Legal Centres (to find a community legal centre). **See** 'Where to get help'. Do this as soon as possible. You will only have a short time to do something before a court order may be made against you requiring you to pay the money you owe, plus interest and court costs. If the debt is your home loan, a court will usually also order the repossession of your home.

You should apply for a hardship variation before a lender takes court action against you. If you have been served with court documents you may still apply for a hardship variation at VCAT. Contact Consumer Action Law Centre or Bushfire Legal Help for advice and help with this. **See** 'Where to get help'.

Credit reports

To find out if a court order has been made against you, you can order a copy of your credit report, which will have this information. Your credit report also has information about your credit history, including requests for loans (including applications for mobile phones and utilities), late payments and unpaid debts.

Note: if you request your credit report, your contact details will then become available to any lenders who want to check your report. To order your credit report visit www.mycreditfile.com.au

More information

Read Consumer Action Law Centre's fact sheets What happens if you do not pay a loan? and How do I get a copy of my credit report? on their website at www.consumeraction.org.au/publications/fact-sheets

Do I have to make mortgage payments if my house was damaged, destroyed or if my situation has changed because of the fires?

You still need to pay your mortgage but there are steps you can take to make this easier.

Contact your lender and try to arrange changing or stopping your repayments for a period up to 12 months. A financial counsellor can help you with this. If your lender does not agree, you should apply to VCAT for a hardship variation.

Hardship variations do not apply to investment properties and your mortgage must be less than \$312, 400. Contact Consumer Action Law Centre or Bushfire Legal Help for legal advice. **See** 'Where to get help'.

For information on mortgages generally see Fitzroy Community Legal Centre's Law Handbook conveyancing and mortgage fact sheet at http://www.lawhandbook.org.au/fact_sheets/

What about leasing agreements? The items I leased were destroyed – do I have to keep paying?

You may have to make repayments or replace the destroyed item. If you miss payments, you may have to pay extra money or pay out the entire contract. The item may have been insured, so check your contract. A financial counsellor or Consumer Action Law Centre can help you sort this out. **See** 'Where to get help'.

If the items were not for your business you may apply for a hardship variation.

Can I access my superannuation to help pay my debts?

Checking to see if you are eligible

You may be able to get your superannuation early if it is used to stop your lender selling your property, for medical reasons (or paying expenses to do with the medical needs) or the death of someone dependent on you. There are other special circumstances for why you will be allowed to get your superannuation early. You will need to talk to your superannuation fund.

Note: some people on certain Centrelink pensions can get their superannuation early. You need to contact Centrelink to see if you can do this. There are different numbers to call depending on what payment you are on. **See** 'Where to get help'.

Making the application

If you are eligible, you will need to apply to get your superannuation early through the Australian Prudential Regulation Authority. The application forms are on the Australian Prudential Regulation Authority website at

www.apra.gov.au/Superannuation/. There are different forms depending on your reason for wanting to get your superannuation early – make sure you use the right form. If your application is refused, contact a financial counsellor or get legal advice. **See** 'Where to get help'. A financial counsellor can also help you with applying in the first place. Contact Consumer Affairs Victoria on 1300 558 181 to find a financial counsellor near you.

In special circumstances you may not have to go through Australian Prudential Regulation Authority and may be able to apply directly to your superannuation fund. In this case, ask your trustee how to apply.

Paying tax

You may have to pay tax on your superannuation if you get it early. Usually it is between 20% and 25%. Contact the Australian Taxation Office on its Emergency Support Infoline 1300 304 975 to find out how much tax you may have to pay.

My friend or relative has died in the bushfires. What happens to their debt?

The debt of your deceased friend or relative will be paid from their estate. An estate includes things like money, property and anything else owned by a deceased person. If the estate is not big enough to cover all of the debts, the debts remain unpaid.

If you are a co-borrower with a deceased person, the creditor is likely to require you to pay all of the debt. Contact Consumer Action Law Centre or Bushfire Legal Help for legal advice. **See** 'Where to get help' and the Wills and estates chapter for information on estate administration.

What if I disagree with the amount I owe?

If you disagree with the amount of a debt you might be able to use a dispute resolution scheme, such as the Financial Ombudsman Service or the Credit Ombudsman. Doing this might help stop any legal action starting until the debt is sorted out.

If the debt is a credit card, personal or home loan, the lender has a legal requirement to provide you with statements of account showing the amount owing.

Do I have to repay my debt?

If your only income is from a Centrelink payment, a court will not make you repay your debt from this income. Workcover payments are usually protected too. Victoria Legal Aid or a community legal centre can help you draft a letter to your creditor. **See** 'Where to get help'. If you have property, it may be seized and sold, so get legal advice on this point at the same time.

If you have an old debt, you may not have to pay it. A debt is 'old' if, for six years, you have not:

- made payments to the debt
- said in writing that you owe the debt
- had any court orders made against you.

Note: the period is 15 years, not six years, where:

- the debt is secured by a mortgage over property
- there is already a court order to repay.

Get legal advice if you think your debt is old. **See** 'Where to get help'.

What are my rights?

You have a right not to be harassed or bullied when a creditor or debt collector contacts you. There are very strict guidelines on debt collector behaviour. Visit the Australian Competition and Consumer Commission website at www.accc.gov.au for guidelines (click on 'For consumers > Credit, debt and banking > Managing debts') or read the factsheets on debt collectors on Consumer Action Law Centre's website at www.consumeraction.org.au/publications/fact-sheets

Is bankruptcy a good option for me?

Bankruptcy gives you a legal right to protection from your creditors. You hand over control for most of your debts and significant assets to a bankruptcy trustee. Most debts will be cancelled by bankruptcy. It is a major decision but can be of great value to a person who is earning a low to medium income and has no or limited assets. If you are considering bankruptcy, contact Consumer Affairs Victoria on 1300 558 181 for the number of a financial counsellor near you to give you more advice about bankruptcy or contact the Insolvency and Trustee Service of Australia on 1300 364 785 or visit their website at www.itsa.gov.au

Other help

There are a number of emergency grants, loans and other help available for those affected by the bushfires. For more information visit the Department Human Services website at www.dhs.vic.gov.au/em/bushfire-recovery or call the Department of Human Services' Concessions Information Line on 1800 658 521.

Consumer Affairs Victoria has free legal information about dealing with debt and other consumer issues. There is bushfire-specific information as well as useful publications on their website www.consumer.vic.gov.au in the 'Building & Renovation', 'Buying & Selling Property' and 'Credit & Debt' sections.

Other useful Handbook chapters

See 'Relief' and 'Utilities'.

DISCLAIMER

The information contained in this chapter of the Bushfire Legal Help Handbook is intended to provide general information on legal topics, current at the time of first publication. The contents do not constitute legal advice, are not intended as a substitute for legal advice and should not be relied on as such. You should get legal advice in relation to your individual circumstances and any particular matters you may have.

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