



LEGAL AID

WESTERN AUSTRALIA

Floods - debt issues

This information sheet is for people who have a debt or are having trouble with money because of severe storms resulting in flood damage. It will explain your legal rights and options and has the contact details of organisations that may be able to help you.

This information sheet cannot replace legal advice. Getting legal advice about your individual situation is important.

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

What should I 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. For contact details for financial counselling services see below under the heading below **Where can I get more information?**

Can I vary my loan contract due to hardship or financial difficulty as a result of the floods?

Individuals and small businesses can ask their credit provider for assistance where, for a short period of time, they are unable to meet their repayments under a credit facility. A credit facility includes a credit card, personal loan, home loan or overdraft facility.

A hardship variation can give you:

- more time to pay (called 'extending the length of a loan') and a reduction in the amount of each payment,
- more time to pay and postponement of certain repayments or
- a delay on payments due on a specific date.
- Under the credit law your loan has to be below a certain amount for you to be able to apply for a credit variation.

How do I apply for a hardship variation?

You write to the lender straight away requesting one of the above changes to your repayment arrangements. Keep a copy of the letter you send. A financial counsellor or legal service can help you do this.

You should provide as much relevant information as possible including the reasons for hardship, your current income and financial expenses, how you will repay the loan and over what period of time. The lender is more likely to accept your request if it is reasonable.

If you have a business debt, you can still try to change your repayment plan with your creditor.

You should continue to pay whatever you can during negotiations.

After you apply for a hardship variation, the credit provider must respond to your request in writing within 21 days. If your credit provider refuses your application it must give reasons.

For more information on hardship variations visit the **Financial Ombudsman Service** website at: http://fos.org.au/centric/home_page.jsp

Can I request a reduction in the interest rate?

You may request a reduction in the interest rate but the lender has no obligation to agree. You should put your request in writing with as much information as possible about the reasons for your request

What if the lender or credit provider does not agree to my request for a hardship variation?

If you disagree with the decision you could tell the credit provider and ask for the decision to be reviewed. If a further response is not given or the lender does not agree to your hardship application, if your lender is a member of an external dispute resolution scheme (EDR), you can lodge a dispute **in writing** with the EDR scheme. Keep a copy of your dispute form.

The EDR will be either the **Financial Ombudsman Service (FOS)** or the **Credit Ombudsman Service (COS)**. You can call **1300 780 808** to check which scheme to lodge with.

These schemes have thresholds based on the amount of variation sought.

What is external dispute resolution?

EDR is a service for resolving disputes between consumers and members of the EDR Scheme. It is the main way to resolve a dispute. It is free and once a dispute is lodged legal proceedings and any other court action stops while the EDR scheme considers your dispute.

What if the dispute is not resolved through EDR?

If you are unsuccessful in EDR you still have the option of going taking legal action. Get legal advice before doing this.

How can a financial counsellor help me?

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

For contact details for financial counselling services see below under the heading **Where can I get more information?**

Help from banks and other creditors

Many 'lenders' (the creditors that lent you money) should 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 my creditor do if I don't pay the debt?

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

What if a court action is threatened?

If you have received a default notice and/or the lender is threatening legal proceedings, (for example, if you have received a letter of demand), you need to act urgently. You should immediately:

1. Send a letter to the lender requesting change on the grounds of hardship (if you have not sent one). If this is not possible ring the lender and ask for a change on the grounds of financial hardship.
2. Lodge an application **in writing or online immediately** to one of the two EDR schemes:

Financial Ombudsman Service (FOS) www.fos.org.au or

Credit Ombudsman Service (COS) www.cosl.com.au.

You can call **1300 78 08 08** to check which scheme to lodge with. You should also get legal advice.

What if I have been given court documents?

If you are served with court documents (for example a 'complaint' or 'writ'), get legal help urgently. 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 as discussed above **before** a creditor takes court action against you.

Contact the **Legal Aid WA's InfoLine** on **1300 650 579** for information and referral or **Consumer Credit Legal Service** on **(08) 9221 7066** for advice and 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 check your report. To order your credit report visit www.mycreditfile.com.au.

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

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 limited period. A financial counsellor can help you with this. If your lender does not agree, you should apply to the relevant EDR scheme (FOS or COS) for a hardship variation.

The threshold for making a hardship variation is different depending on when the contract was entered into or refinanced. However EDR schemes have thresholds based on the amount of variation sought. Contact **Consumer Credit Legal Service** on **(08) 9221 7066** for legal advice or **Legal Aid WA's InfoLine** on **1300 650 579** for information and referral.

Can I access my superannuation to help pay my debts?

How do I check to see if I am eligible?

While it is rare to get your superannuation early, you may be able to get part of your superannuation early on **compassionate grounds** if it is used to stop your lender selling your property or other specific special circumstances. You will need to contact your superannuation fund to see if they allow early release of superannuation under any circumstances. If they say yes, then you can apply through the Department of Human Services (Cth). You will need to meet the requirements and have the necessary proof.

Some people on certain Centrelink pensions can apply to get their superannuation early due to **severe financial hardship**. You can apply directly to your superannuation fund for early release. Centrelink's role is to respond to requests for confirmation of your income support payment status and has no involvement in determining financial hardship, or deciding if superannuation benefits are to be released.

Contact the **Department of Human Services (DHS) Early Release of Superannuation Benefits Branch** on **1300 131 060** for more information on early release of benefits on compassionate grounds or go to the **DHS Centrelink** website at:

http://www.centrelink.gov.au/internet/internet.nsf/individuals/early_release_of_superannuation.htm for information on early release because of severe financial hardship and on compassionate grounds, including mortgage assistance, and to obtain the application form required in this case.

A financial counsellor can help you with applying in the first place.

You may have to pay tax on your superannuation if you get it early. Contact the **Australian Taxation Office** on **13 28 61** for an interview to find out how much tax you may have to pay.

Where can I get more information?

- For information and referral **Legal Aid WA's InfoLine** on **1300 6540 579**
- Contact the **Disaster Response Hotline** on **1800 032 965** (country free call) for counselling and personal support or information about welfare assistance and accommodation
- For information about **Centrelink** assistance for flood victims including eligibility and a fact sheet **Crisis Payment for People in extreme circumstances**, go to its website at <http://www.centrelink.gov.au/internet/internet.nsf/home/index.htm> and see under **Community recovery /Centrelink assistance in emergencies** and under **Publications** or under **Individuals /Crisis and special help**
- You may be able to get legal advice from your nearest community legal centre. To find the one nearest to you contact the **Community Legal Centres Association (WA)** on **(08) 9221 9322** or visit its website at <http://www.communitylaw.net/>
- For referrals to free financial counsellors contact **Financial Counsellors Association of Western Australia** on **(08) 9325 1617**
- Contact the **Financial Counselling Hotline** on **1800 007 007**. It is a free confidential service for all Western Australians with financial problems and queries

- For advice and counselling on credit related issues contact the **Consumer Credit Legal Service WA** on (08) 9221 7066, Monday to Friday, 9.30am to 5.00pm www.cclswa.org.au
- Contact the **Financial Ombudsman Service Natural Disaster Hotline** on 1800 337 444 or email FOSdisaster@fos.org.au for help and information on financial hardship, insurance claims and other financial issues experienced as a result of extreme weather events or call 1300 78 08 08 to register a dispute about a financial hardship application. A dispute can also be registered online with FOS. A fact sheet: **Natural disasters: are you experiencing financial difficulty** can be downloaded at its website: http://fos.org.au/centric/home_page.jsp
- Contact the **Credit Ombudsman Service (COSL)** – www.cosl.com.au on 1800 138 422 to make a complaint if your credit provider is a member of that service
- For counselling and support contact **Beyond Blue** on 1300 224 636, seven days, 24 hours a day, www.beyondblue.org.au
- For information and referral contact **Citizens Advice Bureau WA** on (08) 9221 5711
- For information and consumer advice relating to finance and credit go to the **Australian Securities and Investment Commission MoneySmart** website at www.moneysmart.gov.au/
- If you are having trouble paying your utilities bills (gas, water, or electricity) due to financial hardship you may be able to get assistance from the **WA Government Hardship Utilities Grant Scheme (HUGS)**. More information is available at the **Department for Child Protection** website at: [http://www.dcp.wa.gov.au/servicescommunity/Pages/HardshipUtilitiesGrantScheme\(HUGS\).aspx](http://www.dcp.wa.gov.au/servicescommunity/Pages/HardshipUtilitiesGrantScheme(HUGS).aspx)
- You can download a brochure from the **Department for Child Protection website** on dealing with the effects of a traumatic event at <http://www.dcp.wa.gov.au/CrisisAndEmergency/Pages/EmergencyServices.aspx> or contact the Department on 1800 032 965
- Visit the **Fair Work Ombudsman** website or contact the **Fair Work Ombudsman** for information on employment entitlements during natural disasters including a fact sheet at: <http://www.fairwork.gov.au/resources/fact-sheets/workplace-rights/Pages/employment-entitlements-during-natural-disasters-or-emergencies.aspx>

Natural disaster - government assistance

Australian and/or State Government assistance may be available if the impact of the floods meets the criteria to be declared an “eligible natural disaster” for the purposes of Natural Disaster Relief and Recovery Arrangements. In this case you may be able to more information from:

- The **Fire and Emergency Services Authority of WA (FESA)** website www.fesa.wa.gov.au/Pages/default.aspx under the heading **Disaster Assistance** on assistance available for individuals, families, small business and primary producers.
- If the State Government has set up relief schemes for immediate financial assistance if you have lost or had significant damage to your home, contact your **local government** to apply for payments
- **FESA for Western Australia Natural Disaster Relief and Recovery Arrangements (WANDRRA)** on (08) 9323 9552 for small business and other enquiries or visit www.fesa.wa.gov.au
- The **Department of Food and Agriculture** on 1800 198 231 or its website at www.agric.wa.gov.au if you are a primary producer for advice on recovery, freight costs, fencing and interest rate subsidies
- The **Department for Child Protection** on 1800 032 965 for help available for individuals and families
- The **Australian Government Disaster Assist** <http://www.disasterassist.gov.au/www/disasterassist/disasterassist.nsf/Page/Home> or **Australian Emergency Management** <http://www.em.gov.au/> websites may have more information on government assistance



Legal Aid Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

55 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Fremantle Regional Office

Shop 7, Queensgate Arcade, William Street, Fremantle, WA 6160
(08) 9336 9100

Midland Regional Office

Landgate Building, 1 Midland Square
Cnr The Avenue and Old Great Northern Highway
Midland, WA 6056
(08) 9274 3327

Southwest Regional Office

Koombana Court, 141 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 7, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Christmas/Cocos Islands Office

Administration Building Gaze Road,
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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