

DEBT

Got you down?

A guide to helping change your contract to repayments you can manage.



The National Credit Code states that if there has been a change in your circumstances (like illness, unemployment, or other reasonable cause) and it is causing financial hardship, you have the right to apply for a change to your contract. *This is called a hardship variation.*

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**A guide to helping change your contract
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The National Code applies in its entirety to contracts
entered into on or after 1 July 2010

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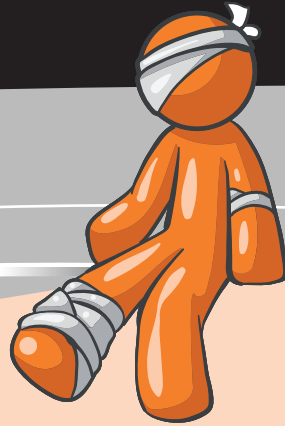
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This booklet applies to contracts entered into from 1 July 2010. For contracts entered into before 1 July 2010, the hardship provisions only apply to contracts in which the amount borrowed is less than the hardship threshold applicable to contracts under the (Old) Uniform Consumer Credit Code. This varies from time to time. You can check the current figure by going to www.creditcode.gov.au. Go to General Information, then Hardship Threshold.

I can't keep up with my repayments, what can I do?



If you are eligible you could change your contract to make it easier to pay or to stop payments for a short time.

Eligibility:

- A change in your circumstances since you first signed the contract. For example, you may be sick or unemployed.
- You reasonably expect to be able to make payments again if your contract was changed.
- The amount you borrowed isn't greater than \$500,000.
- The credit is mainly for personal, domestic or household purposes, or in relation to residential property for investment purposes.

What changes can be made to my contract?

*Under section 72 of the National Credit Code you can apply to your credit provider to change your contract. This is called a **Hardship Variation**. Types of changes are:*

1. Extend the length of your contract and reduce the amount you usually pay (**e.g. your contract is 3 months longer and you now pay \$80 per fortnight instead of \$100**).
2. Postpone payments for a set period of time, and catch up at an agreed time (**e.g. you don't make payments for 2 months and catch up at the end of the 2 months**).
3. Postpone payments for a set amount of time and extend your contract (**e.g. you miss 3 months of payments and you extend your contract for 3 months**).

Michelle worked at Aston's Bar and Grill. Unfortunately she had been picked up one too many times for talking on her mobile whilst driving and lost her license. Her boss said he couldn't wait for her to get her extraordinary license and so Michelle lost her job.

Fortunately Brad offered her a job at the local seafood restaurant that was about to open in 2 months time. Michelle was being hassled by Luvurmoney Finance.

Michelle wrote to Luvurmoney Finance and asked them to postpone her payments for 2 months and extend her contract for 2 months.

How do I apply for a Hardship Variation?

Applying for a hardship variation is best done by letter and sent via registered post (keep copies of all letters sent and your registered post receipt). This will help if you need to take the matter further at a later date. Some advantages to writing rather than phoning your credit provider are:

- You have proof of contact with your credit provider and any vital documents to help support your request.
- You avoid a potentially distressing conversation.
- You avoid being pressured into agreeing to solutions you cannot maintain.
- **It can be beneficial to phone your credit provider to let them know you intend to apply for a variation in writing.** They may have forms for you to complete, and it also alerts them to your intentions – which may stop them commencing legal action.



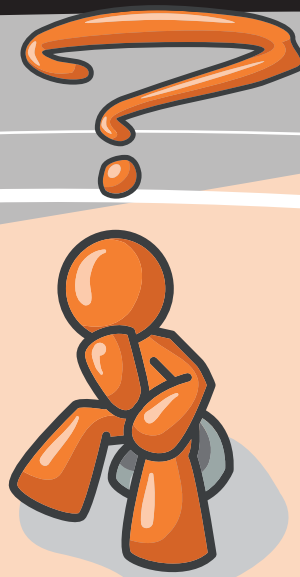
Sample Letters to illustrate how to ask for a hardship variation are found at the end of this booklet.

What do I put in my letter?

When applying for a hardship variation by letter, you will need to:

- Provide loan contract numbers.
- Outline the change in your circumstances and how it is causing you hardship.
- Make reference to Section 72 of the Code (see 'sample letters').
- Specify which of the three changes to your contract you are requesting.
- Make a realistic offer - only offer repayments you can afford.
- Include an 'Income and Expenditure' statement (sample found at the end of this booklet).
- State if the matter is urgent and request an urgent decision if you are worried about your goods being repossessed.
- Include supporting documents - e.g. medical or work separation certificate; receipts for unforeseen expenses.
- **Set a 21 day deadline for your credit provider to respond by.** The Code requires that they must reply within this time.

What if I'm not eligible for a hardship variation?



- If you are dealing with a bank, you can rely on clause 25.2 of the Code of Banking Practice. This requires the bank to work with you to try to overcome your financial difficulty.
- If you don't meet the criteria outlined on page four you are still able to negotiate with your credit provider.
- Although you won't have the backing of the National Credit Code your credit provider may still agree to change your contract or give you some extra time to pay.
- You can use the sample letters at the end of this booklet as a guide, BUT leave out the parts in italics that refer to hardship variations and section 72.
- Financial Counsellors are free, independent and able to assist with negotiating on your behalf with the credit provider.

For details on how to find your nearest counsellor see the "Who can help me?" section of this booklet.

My variation was rejected, can I take further action?

If you believe that you are eligible for a variation and it was rejected, or you didn't receive an answer to your request:

- You may decide to first seek the assistance of an **external dispute resolution (EDR) scheme**. EDR schemes are free for consumers. The lender must be a member of an EDR scheme. Contact the EDR scheme if you believe the creditor's response has been inadequate.
- You may contact the appropriate EDR (eg Financial Ombudsman Service –www.fos.org.au) whether legal proceedings have commenced or not.
- FOS is free for consumers. The creditor cannot normally begin legal proceedings after you have lodged a dispute. If the creditor began legal proceedings before the dispute was lodged with FOS, it also cannot continue legal proceedings, with some minor exceptions.

This may also prove helpful if you need extra time.

Courts

You can take further action through:

- the Federal Court;
- the Federal Magistrates Court; and
- superior Courts and lower Courts of a State or Territory

The Federal Court:

there is no limit on the jurisdiction of the Federal Court.

The Federal Magistrates Court:

has jurisdiction in matters up to \$750,000.

The Magistrates Court:

relates to matters arising in Western Australia up to the value of \$75,000.

Small Claims Procedure:

to be dealt with by a Magistrates Court, a Local Court, or the Federal Magistrates Court under a small claims procedure - up to certain limits.

For hardship and postponement applications, the Small Claims Procedure is available to consumers if the contract relates to credit up to \$500,000.

Who can help me?

There are a variety of places that can assist free of charge:

Financial Counsellors:

Found throughout WA, financial counsellors can assist with credit and debt problems and may advocate on your behalf with lenders. To find your nearest financial counsellor contact:

Financial Counsellors Resource Project

Ph: (08) 9221 9411

Web: www.fcrp.org.au

(list of counsellors available on the web).

Consumer Credit Legal Service

Provides phone information, and advice about credit issues.

Ph: (08) 9221 7066

Web: www.cclswa.org.au

Financial Ombudsman Service

Independently resolve disputes between consumers and member financial services providers. Ph: 1300 78 08 08

Web: www.fos.org.au

Sample Letter 1

(Reduced Payment Arrangement)

Your Address

Date

Finance Company Name
Finance Company Address

Dear Sir/Madam

Re: your name and loan contract number
Request for a hardship variation

I am writing to advise you of a change in my circumstances that is causing financial hardship, *and to request a hardship variation to my contract under Section 72 of the National Credit Code.*

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that reduces my loan repayments from \$.... (insert amount) per fortnight to \$... (insert amount) until the loan is repaid. I understand that the term of my loan will be longer because of this.

I have enclosed a (e.g. medical certificate, employment separation certificate, whatever is relevant to your situation) as evidence of my current circumstances. I have also enclosed an income and expenditure statement (sample found at the end of this booklet).

Please advise me of the total cost of the change to my contract.

If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with the Ombudsman or with the Court. Thank you for considering my application.

Yours sincerely
Your Signature [Your Name]

Sample Letter 2

(Moratorium – Postpone Payments)

Your Address

Date

Finance Company Name

Finance Company Address

Dear Sir/Madam

**Re: your name and loan contract number
Request for a hardship variation**

I am writing to advise you of a change in my circumstances that is causing financial hardship, *and to request a hardship variation to my contract under Section 72 of the National Credit Code.*

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that will postpone my loan repayments for a period of (insert amount, e.g. 3) months. At the end of this time I will be able to double my repayments and catch up without requiring the term of the loan to be extended.

I have enclosed a (e.g. medical certificate, employment separation certificate, whatever is relevant to your situation) as evidence of my current circumstances. I have also enclosed an income and expenditure statement (sample found at the end of this booklet).

Please advise me of the total cost of the change to my contract.

If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with the Ombudsman or with the Court. Thank you for considering my application.

Yours sincerely

Your Signature [Your Name]

Sample Letter 3

(Postpone Payments and Extend Contract)

Your Address

Date

Finance Company Name

Finance Company Address

Dear Sir/Madam

**Re: your name and loan contract number
Request for a hardship variation**

I am writing to advise you of a change in my circumstances that is causing financial hardship, *and to request a hardship variation to my contract under Section 72 of the National Credit Code.*

[Outline what unforeseen circumstances have changed for you – e.g. injury, separation, unemployment...]

Due to these circumstances I am requesting a variation that will postpone my loan repayments for a period of (insert amount, e.g. 3) months, and for the term of the loan to be extended accordingly.

I have enclosed a (e.g. medical certificate, employment separation certificate, whatever is relevant to your situation) as evidence of my current circumstances. I have also enclosed an income and expenditure statement (sample found at the end of this booklet).

Please advise me of the total cost of the change to my contract.

If I do not receive a written response within 21 days, or if you refuse my request but don't provide reasonable grounds, I will take this matter further with the Ombudsman or with the Court. Thank you for considering my application.

Yours sincerely

Your Signature [Your Name]

Income and Expenditure Statement

FORTNIGHTLY INCOME

Wages/Salary	\$
Social Security	\$
Parenting Allowance	\$
Family Payment	\$
Child Support	\$
Austudy	\$
Board	\$
Sub-total:	\$

FORTNIGHTLY LIVING EXPENSES

Mortgage	\$
Water rates (year)	\$
Council rates (year)	\$
Electricity (2 mth.)	\$
Gas (3 mth.)	\$
Telephone	
- Landline	\$
- Mobile	\$
Home maintenance	\$
Mowing/gardening	\$
Insurance	
- Personal	\$
- Car	\$
- Home/Contents	\$
Super	\$
Ambulance costs	\$
Chemist	\$
Dentist	\$
Medical costs	\$
Medical insurance	\$
Registration	\$
Vehicle maintenance	\$
Driver's licence/RAC	\$
Gifts	\$
Education costs	\$
Hairdresser	\$

Vet bills/Dog wash	\$
Rent of household goods	\$
Child Support	\$
Internet Costs	\$
Holidays	\$
Clothing	\$
Sub Total	\$

Rent/Board	\$
Food	\$
Milk & Bread	\$
Take-away/Eating out	\$
Petrol/Parking	\$
Bus/Taxi fares	\$
Entertainment/Foxtel	\$
Sports	\$
Alcohol/Cigarettes	\$
Day care	\$
Bank fees	\$
Computer Consumables	\$
Sub-total:	\$

Creditors:	
_____	\$
_____	\$
_____	\$
_____	\$
_____	\$
_____	\$

Sub-Total: \$

Total Income: \$

Total Expenses: \$

Difference (Income - Expenses): \$

