



This information is general and not a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems.

Contact the Legal Helpline 1300 366 424

(TTY 8463 3691) www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

DEBTS

Many of us go through a time when we cannot afford to repay money we owe. If you are being asked to pay money which you think you do not owe, you should seek help quickly to protect your rights.

IF I CANNOT PAY MY BILLS WHAT CAN I DO?

STEP 1

Write down a statement of your financial position. A **financial counsellor** can help you do this free of charge. It should include:

- money coming in
- money going out for food, rent, clothes, bills, etc.
- money owed

This financial statement will help you and your **creditors** (those people you owe money) understand clearly your position.

STEP 2

List all your creditors and the amount you owe them. Make an offer in writing to pay them an amount each fortnight. Tell them the personal circumstances of your debts eg sickness, loss of job.

- Don't make an offer you may not be able to keep up
- Your creditor does not have to accept any offer you make

A financial counsellor may be able to help you with other options or negotiate on your behalf.

FINANCIAL COUNSELLORS

A financial counsellor can help you to work out a budget and a statement of your financial circumstances. A statement prepared by a financial counsellor can be useful if you are required to provide proof to the court or a creditor of your ability to pay. They can also assist in negotiating with creditors on your behalf. Their services are free and a list of contacts is provided at the back of this pamphlet.

WHAT CAN A CREDITOR DO TO ME?

If you owe someone money you need to be aware of the possible actions they may take against you. They may do any or all of the following:

- make a report to the credit rating agency
- send letters demanding payment
- have a debt collection agency to recover the money
- take court action

DEBT COLLECTORS

Debt collectors are not allowed to come to your house or phone you demanding payment between 10.00 pm and 7.00 am each day and not at all on public holidays. There are strict controls on debts collectors. They must be licensed and they are not allowed to threaten you. If you feel you are being harassed you can make a report to the Office of Consumer and Business Affairs, telephone 8204 9777.

Often debt collectors will include their costs in the amount being recovered. You may not be liable for these costs unless you have agreed to them specifically (these debt recovery costs may be a condition of a credit card or loan).

WHAT IF WE REACH AN AGREEMENT?

Where an agreement is reached about the amount of money owed it is possible to make a court **enforceable payment agreement** recording the amount owed. It is recommended you see a financial counsellor to make sure that the new payment plan you are about to agree to is realistic in your financial circumstances.

WHAT IF I RECEIVE A CLAIM OR A SUMMONS FROM THE COURT?

Don't ignore it. Get legal advice. A 'claim' is a court form which says you owe money. If you ignore the claim the court assumes that you owe the full amount and will make judgment against you. **Judgment** is the court's finding that you owe an amount of money.

If you don't agree with the claim you must lodge a defence or a counter-claim within 21 days.

If the matter goes to court, be sure to attend on time otherwise judgment may be decided against you. If you want to negotiate 'out of court', get your creditor's written agreement that no action will be taken against you while you are negotiating and that no court orders will be taken against you. A financial counsellor can help you do this. Even if you cannot pay any money you should contact your creditor because they may decide it is not worth their trouble to chase the debt.

WILL I GO TO GAOL?

You cannot be gaoled for failing to pay your debts but the court can imprison you for up to 40 days for disobeying its orders, such as refusing to attend court or refusing to pay if you have the money.

WHAT ABOUT MY CREDIT RECORD?

Even **before** a matter is taken to court a credit provider can report overdue accounts to a credit rating agency. Court judgments, bankruptcy and credit refusals are listed on your credit record. If your credit record shows you have defaulted on payments it will be difficult to obtain credit in the future.

HOW CAN THEY MAKE ME PAY?

Once the matter has been to court and judgment has been decided against you, a creditor has several ways to make you pay. Remember, they can still keep pressing you to pay either by letter or through a debt collection agency.

The main ways are:

1. Investigation Summons and Examination Summons

An **Investigation Summons** brings you to the Magistrates Court to answer questions about how you will pay your debt. **Don't be late or else a warrant may be issued for your arrest.** Get a financial counsellor to help you fill in the income and expenditure form which is attached to the summons. You may be pressed to make a large offer each week but do not offer to pay more than you can afford. If you do not make those payments you will be brought back to court under an Examination Summons to explain why you have not paid.

2. Taking your goods (Warrant of Sale)

The court has the power to authorise the seizure and sale of your property (real estate and personal property). This means a sheriff can come to your house and take things to sell to pay for your debt.

They cannot take your

- necessary furniture, personal things, car (valued under \$6,000) and tools of your trade up to \$3,050.

They can also sell your house or land in some circumstances.

3. Garnishee Order

This is an order to a person who owes money to you to pay the money directly to your creditor. Your wages can only be affected with your consent. Centrelink payments cannot be touched, but money in bank accounts can be ordered to be paid to your creditor.

4. Charging Order

A Charging Order works like a mortgage that restricts you from dealing with your property. The court can order the sale of this property to pay your debts.

5. Bankruptcy

If you owe more than \$2,000, your creditor can send you bankrupt. You can also apply to go bankrupt voluntarily. Sometimes there is no other option, but bankruptcy is not to be taken lightly. If your debts, assets and income are under certain limits you may be eligible to put a Debt Agreement proposal to your creditors through the Official Receiver at no cost. More information about debt agreements and bankruptcy is available from a financial counsellor and ITSA.

Insolvency and Trustee Service Australia
18th Floor, Grenfell Centre
25 Grenfell Street
Adelaide 5000
Telephone 8112 4300

REMEMBER

- Get advice as soon as possible
- Put everything in writing
- With careful planning many problems can be avoided.
- Don't ignore creditors. Most are understanding and will only press you if you ignore them.

FINANCIAL COUNSELLORS

Aboriginal Legal Rights Movement

321-325 King William Street
Adelaide SA 5000
Telephone 8113 3777
Freecall 1800 643 222

FAMILIES SA

Contact your local Families SA Office
<http://www.dfc.sa.gov.au/financial/default.asp>

Rural Counsellors

GPO Box 1671 Adelaide 5000
Telephone 8226 0342

South Australian Financial Counselling Association

<http://www.safca.info/>

To order copies of this free fact sheet visit
www.lsc.sa.gov.au or telephone 8463 3528.
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