

Consumer credit

CCLSWA: not-for-profit charitable organisation which provides legal advice and representation to consumers in WA in the areas of credit, banking and finance. CCLSWA also takes an active role in community legal education, law reform and policy issues affecting consumers.

→ assist WA community to develop just and fair relationships with banks and financial institutions

→ assist in resolving consumer disputes with banks and financial institutions.

→ create awareness, knowledge and understanding of consumer issues involving banks and financial institutions.

→ to develop a culture of consumer credit that is fair and just.

National Consumer Credit Protection Act 2009 (Cth)

1. Responsible lending
2. Default notices
3. Repossessions
4. Hardship

1. Lender's obligations

- Make reasonable inquiries about the consumer's financial position as well as their requirements and objectives for the loan;
- Be able to verify these details; and
- Make an assessment about whether the contract is unsuitable or not.

- A lender should not enter into a loan if the customer would not be able to afford expenses.
- If a lender enters into a loan that is unsuitable CCLS would advise the lender they breached their obligations under responsible lending. Despite the fact they entered into an agreement, lender may have to pay back the fees and charges.

2. Default notices

- If you miss even ONE repayment, the creditor can issue a default notice under s 88 of the NCC.
- A lender may not end a credit contract or enforce a mortgage until providing a default notice (there are some circumstances where the lender may be relieved of this requirement)
- A default notice gives you at least 30 days

3. Repossession

- When you borrow money to buy goods, the lender will often take out a 'security' over those goods. This gives the lender the right to repossess and sell the goods in certain situations.
- Repossession of real property

1. Financial difficulty
2. Missed payment
3. Default notice
4. Demand notice (optional)
5. Writ of summons
6. Default judgment application
7. Judgment
8. Repossession

9. Sale
10. Shortfall

Options: pay arrears, sell, surrender, do nothing.

4. Hardship

What to include in a hardship variation request:

- Cause of the financial hardship;
- When/how the financial will improve;
- How the repayments are to be changed;
- How the arrear will be made up.

- There are two elements to financial hardship: reasonable cause and has to be temporary.

- Reasons a lender may reject a request
 - situation not temporary
 - lender believes a further default is inevitable
 - previous hardship arrangements
 - thresholds

If the lender agrees to change the contract:

- Change is for a period of no more than 90 days: if the change defers or reduces your obligations under the contract for no more than 90 days, the lender does not have to give you written notice of the change; or
- Change is for a period of more than 90 days: within 30 days of the agreement the lender must give you written notice of particulars of the change in terms of the contract

If the lender refuses to change the contract:

- Within 21 days of receiving your Hardship Variation Application your lender must give you written notice of the reasons why they refuse to change the contract

Contracts entered into on and after 1 March 2013: If eligible a contract may be changed in order to make it easier to pay

- Application for a hardship variation if debtor unable to meet the obligations
- There are no longer specific ways in which a contract can be varied
- The contract can be varied in any way provided there is a good reason for varying it, and
- The lender will be paid back in a reasonable time
- There is no dollar limit for hardship applications

Typical variations

- Extend the length of the contract and reduce the repayments
- Postpone repayments for a set period and catch up in an agreed time
- Postpone payments for a set amount of time and extend contract

When writing a letter to lender

- Address the criteria
- Reference the section 72
- Include evidence you believe supports the application (eg. Income and expenditure, separation certificate)
- State 21 day deadline for response from lender.