

# Having trouble paying your debts?

This factsheet is designed to help Queenslanders with some of the issues you may be facing when your property has been damaged by a natural disaster such as a cyclone, storm or flood.

## Property used as security

### **My destroyed property was used as security for a loan on my home or another property I bought. What happens now?**

A property that has been used as security for a loan acts as a protection for the lender if you default (miss payments) on the loan. If the property was damaged, you still need to make regular loan payments.

Usually you need to tell the lender as soon as possible about any damage to the property that was being used as security. In most cases, the lender has standard expectations for the property being used as security (eg the lender will have required that the property is insured). If the property is damaged or destroyed, the lender will then require that you use any insurance payout to restore the property unless the loan is paid out. Check your mortgage document's terms.

If the destroyed property was not insured for cyclone or other natural disasters and the lender asks you to give more security or to pay the loan out in full or in part, you should get legal advice.

### **My property was destroyed or damaged during renovations or building, and I owe money for completed work done before the flood or cyclone. Do I have to pay?**

Yes. Your contract with the tradespeople (to do work on the property) remains despite the floods or cyclone. If the damaged property is insured, you may be able to claim on your insurance policy. The builder may also be insured for this work so check if their general construction insurance covers the loss. Talk to your builder and ask to see a copy of the contract if yours was destroyed in the flood or cyclone.

## Debt and loans

### **What if I am having trouble paying my debts because of the floods or cyclones?**

#### *1. Tell your creditors*

Tell your creditors 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 payment 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.

#### *2. Apply for a hardship variation*

If you have borrowed money you may also apply for a 'hardship variation' to change your contract with the creditor. Under the National Credit Code, most borrowers are legally entitled to apply for a hardship variation (see the sample letters at [www.floodlegalhelp.qld.gov.au](http://www.floodlegalhelp.qld.gov.au)). In addition, many lenders are bound by codes of practice, such as the Banking Code of Practice, which set out obligations to help consumers and small businesses in financial difficulties.

A hardship variation can give you more time to pay (called 'extending the length of a loan'), reduce your regular payment amount or give you a break from paying anything for a period of time.

If your application for a hardship variation is refused by your lender, you can take your application to the Australian Financial Complaints Authority (AFCA). The scheme staff will look at your situation and work with your creditor to try and reach an agreement between you and the creditor.

Contact AFCA on 1300 931 678 to get help and information on financial and insurance issues experienced because of the disaster or floods. This service is free to you as a consumer.

Once you apply to the ombudsman's office, your lender will not be able to start or continue legal proceedings against you while the application is being considered.

For free legal advice on credit and debt, call Legal Aid Queensland on 1300 527 700.

For more information about credit law variations, visit the Australian Securities and Investments Commission website at [www.moneySMART.gov.au](http://www.moneySMART.gov.au)

If you have a business debt, you can also try to change your payment plan with your creditor. A financial counsellor or legal service may help you do this. Small businesses can also access AFCA if they have a complaint about their lender.

### ***3. Get help from a financial counsellor***

Financial counsellors offer free independent assistance about credit and debt. This sort of counselling is not the same as grief and trauma counselling which may also help. Financial counsellors can help you to access financial hardship programs with your service providers and with lenders, to give you time to get back on track with your bills.

Financial counsellors can help you:

- understand your financial rights and responsibilities
- understand debts and debt recovery processes
- budget and manage your money
- voice your circumstances to creditors and others
- understand insolvency options.

Rural financial counsellors can help farmers, fishers and small rural businesses with:

- cash flow budgeting and business planning
- business analysis to determine their current situation and available resources
- identifying available options
- accessing disaster support measures and other forms of financial and professional assistance
- identifying areas of risk in the business.

### ***4. Get help from your bank or creditor***

As a result of the flooding or cyclone disaster, creditors should be offering you hardship variations that will reduce your payments while you are cleaning up and getting back on your feet after the disaster. Contact your lender for more information on these options and to see what other help they may offer. Do not just accept the arrangement they offer you if it does not suit your circumstances.

Any hardship variation offered by a lender should be tailored to your specific circumstances. For example, you should not accept a lender's offer to put your payments on hold for three months if it is going to take you six months to be back in your home and working full time again.

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

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

If you don't pay back your debt, the lender can usually charge you a higher interest rate, plus legal and enforcement costs, and take you to court to sue you for the money you owe them. If you receive a letter of demand from a lender or are served with court documents, for example a *Claim*, get legal help immediately. Contact Legal Aid Queensland on 1300 527 700 for information on the best services to help you.

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 court. Contact Legal Aid Queensland or your local community legal centre for help.

### **How can I find out if a court has made an order against me?**

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

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

Yes. You still need to pay your mortgage, but there are steps you can take to make this easier. Contact your lender and try to change or stop your payments for a period to allow you to get back on track. A financial counsellor can help you with this. If your lender does not agree, you should apply to your lender's dispute resolution scheme for a hardship variation. Contact Legal Aid Queensland or a community legal centre for legal advice about this.

## **The items I leased were destroyed. Do I have to keep paying the lease?**

Yes, but check the lease's terms. You may have to make payments 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 Legal Aid Queensland or community legal centre can help you sort this out.

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

## **What if I disagree with the amount I owe?**

If you disagree with your debt amount, you should make a complaint to the lender's dispute resolution scheme. By doing this, you may be able to stop any legal action starting until the debt is sorted out.

If the debt is a credit card, personal loan or home loan, the lender is legally required to provide you with account statements showing the amount owing.

## **Do I have to pay my debt?**

If your only income is from a Centrelink payment, a court will not make you pay your debt from this income. Workcover payments are usually protected too. Legal Aid Queensland or a community legal centre can help you draft a letter to your creditor to let them know about your income situation.

Basic household goods, such as your cutlery and children's toys, are protected and cannot be sold by a creditor. If a creditor is threatening to seize goods like this, you should get legal advice from Legal Aid Queensland or your local community legal centre immediately.

If you have an old debt, you may not have to pay it. It may be 'statute barred', which means the creditor can no longer legally recover it. A debt will be statute barred if in the last 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.

You should get legal advice about your debt, even if you do not think it is statute barred.

## **What are my rights when dealing with a debt collector?**

You have a right not to be harassed or bullied when a creditor or debt collector contacts you. There are strict guidelines about debt collector behaviour. Visit the Australian Competition and Consumer Commission website at [www.accc.gov.au](http://www.accc.gov.au) (click on 'Consumers' > Debt and debt collection') for guidelines about what a debt collector can and cannot do when they contact you.

## **Can I access my superannuation to help pay my debts?**

No one can make you access your superannuation as a condition of considering a hardship variation or debt payment plan. You should not access your superannuation if you are likely to go bankrupt — your superannuation is usually protected in bankruptcy, but not if you have accessed it!

You may be able to access your superannuation early if the money is used:

- to stop your lender selling your property
- for medical reasons (or paying expenses related to the medical needs)
- following the death of someone you depended on.

There are other special circumstances for when you may be allowed to access your superannuation early. For more information, contact your superannuation fund.

## **How do I apply to access my superannuation?**

If you are eligible, you will need to apply to get your superannuation early through the Australian Taxation Office ([www.ato.gov.au](http://www.ato.gov.au)). There are different forms depending on your reason for wanting to get your superannuation early — make sure you use the correct form. A financial counsellor can help you apply. If your application is refused, you should contact a financial counsellor or get legal advice from Legal Aid Queensland or community legal centre.

You may have to pay tax — usually between 20 and 25 percent — on your superannuation if you receive it early. Contact the Australian Taxation Office's Infoline on 132 861 to find out how much tax you may have to pay.

## **Is bankruptcy a good option for me?**

Bankruptcy gives you a legal right to protection from your creditors. When you declare bankruptcy, you hand over control for most of your debts and significant assets to a bankruptcy trustee. Most debts will be cancelled by bankruptcy. Whether or not you should declare yourself bankrupt 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, you should get advice from a financial counsellor, or contact the Australian Financial Security Authority on 1300 364 785 or at [www.afsa.gov.au](http://www.afsa.gov.au)

## Do you need extra help accessing our services?



We can organise for an accredited interpreter to help you. We are committed to making our services accessible to people from culturally and linguistically diverse backgrounds and people with disabilities.

If you would like this factsheet explained in your language, please phone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland. If you are deaf or have a hearing or speech impairment you can contact us using the National Relay Service. Visit [www.relayservice.gov.au](http://www.relayservice.gov.au) and ask for 1300 65 11 88 (our legal information line). These are free services.

## For more information

### Legal Aid Queensland

1300 527 700  
[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

### Your local community legal centre

1300 527 700  
[www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

### Financial First Aid

1800 007 007

### Australian Financial Complaints Authority

1800 931 678  
[www.afca.org.au](http://www.afca.org.au)

### Australian Securities and Investments Commission

1300 300 630  
[www.moneysmart.gov.au](http://www.moneysmart.gov.au)

### Australian Competition and Investments Commission

1300 302 502  
[www.accc.gov.au](http://www.accc.gov.au)

### Department of Human Services

1300 13 10 60  
[www.humanservices.gov.au/customer/services/centrelink/early-release-of-superannuation](http://www.humanservices.gov.au/customer/services/centrelink/early-release-of-superannuation)

### Australian Taxation Office

132 861

### Australian Financial Security Authority

1300 364 785  
[www.afsa.gov.au](http://www.afsa.gov.au)

## Your Local Legal Aid Queensland office:

### BRISBANE

44 Herschel St, 4000

### BUNDABERG

3rd Floor, WIN Tower,  
Cnr Quay & Barolin Sts, 4670

### CABOOLTURE

Ground Floor, Kingsgate  
42 King St, 4510

### CAIRNS

Level 2, Cairns Square Complex,  
42-52 Abbott St, 4870

### INALA

Level 1, Inala Commonwealth  
Offices, 20 Wirraway Pde, 4077

### IPSWICH

Level 7, 117 Brisbane St, 4305

### MACKAY

Ground Floor,  
17 Brisbane St, 4740

### MAROOCHYDORE

Ground Floor, M1 Building  
1 Duporth Ave, 4558

### MOUNT ISA

6 Miles St, 4825

### ROCKHAMPTON

Ground Floor, 35 Fitzroy St, 4700

### SOUTHPORT

Level 2, 7 Bay St, 4215

### TOOWOOMBA

1st Floor, 154 Hume St, 4350

### TOWNSVILLE

3rd Floor, Northtown  
280 Flinders St, 4810

### WOODRIDGE

1st Floor, Woodridge Place,  
Cnr Ewing Rd & Carmody St, 4114

For more information  
about our services visit  
[legalaid.qld.gov.au](http://legalaid.qld.gov.au)

or phone 1300 65 11 88  
or 1300 650 143 (Indigenous Hotline)

