

Natural disasters (WA) – debt issues

If you have debts or are having trouble with money because of the effects of natural disasters in Western Australia such as bushfires or floods, this infosheet may help. It does not replace legal advice. It is important to get legal advice about your individual situation. Do this as soon as possible as limitation dates may apply which could affect your options.

What if I am having trouble paying my debts because of bushfires/floods?

What should I do first?

Tell your creditor or utility provider (for example in relation to bills for things such as gas, water, electricity, and phone) about your situation as soon as possible. A creditor is the person or organisation to whom you owe money.

Also see a financial counsellor. You can try to change your repayment plans with the creditor. See below for how to do this.

Most utility providers have hardship officers who can help work out a plan to pay the bills in instalments.

How can a financial counsellor help me?

A financial counsellor can help you work out how to pay back your debts, write up your budget and liaise with creditors and service providers. They can also give you names and numbers of other services which may be helpful, such as for family support.

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

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

Individuals can ask their credit provider (lender) for help 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, a business loan or overdraft facility.

You have different options for hardship variation, for example:

- more time to pay (called “extending the length of a loan”) and making smaller repayments over a longer period
- extending your loan and postponing your repayments for an agreed period, or
- delaying repayments due on specific dates for an agreed period.

For a home loan, depending on when you took it out, there are different thresholds for accessing a hardship variation. See the [Australian Securities and Investments Commission website](#) for details of these thresholds. Even if your loan is above the threshold, the lender may still agree to vary the contract.

Small businesses in financial difficulty, depending on their individual circumstances, may also be able to get help from their financial services provider.

Do I have to make mortgage payments if my house was damaged, destroyed or if my situation has changed because of bushfires or 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 a hardship variation as set out below.

How do I apply for a hardship variation?

You can phone or write to your lender straight away requesting a change to your repayment arrangements. A financial counsellor or legal service can help you do this. Keep a copy of the letter you send. If you ring, ask to speak to a “hardship officer” or to “customer service”. Keep a record of when you ring, who you speak to and what is said.

Give the details of your loan. You should provide as much relevant information as possible including the change you want, the reasons for your 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 lender must respond to your request within 21 days letting you know the outcome of your hardship request (unless more information is needed from you).

The lender may ask you to provide information relevant to deciding whether you are or will be able to meet your obligations under the contract or how to change the contract if you are or will be unable to meet the obligations. You should give this information within 21 days. After you provide this

information, the lender must let you know its decision on your request within 21 days. If your lender refuses your application, it must give reasons in writing.

If you are not happy with the response, you can ask to speak to your lender’s internal dispute resolution section.

For more information on hardship variations visit the MoneySmart website under the heading [Problems paying your mortgage](#) or the Australian Financial Complaints Authority (AFCA) website at: <https://www.afca.org.au/>.

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

If your lender is a member of AFCA (the independent external dispute resolution scheme to deal with disputes between consumers and lenders), you can lodge a complaint in writing, by email, online or by phoning AFCA. You can do this if you disagree with the decision regarding your hardship variation, or if the lender fails to reply to your hardship request and the internal dispute resolution process does not change the decision. This can be done for free. Keep a copy of your complaint form.

The lender cannot start or progress legal action while your matter is being considered by AFCA. The exceptions to this include:

- to take the minimum steps necessary to preserve the lender's legal rights, or
- where legal action in defending the action has progressed beyond you lodging a defence or a defence and counterclaim, or
- enforcing a default judgment obtained in court.

Even with these exceptions, the lender needs to get AFCA's consent.

What if the dispute is not resolved through AFCA?

If you are unsuccessful in resolving your dispute through AFCA, you may have the option of taking legal action for a court ordered variation. Get legal advice before doing this.

Help from banks and other creditors

Many creditors should be offering you hardship variations. Contact your creditor for more information on these options and to see what other help they may offer. As a general rule, creditors should not be offering you a refinance, credit increase or extra loan at this time. These all increase your debt. You may have trouble paying back the extra money.

What can my creditor do if I don't pay the debt?

Usually a creditor can take you to court to get an order for you to pay the money you owe. You may have to pay legal and enforcement costs.

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. Phone or write to your lender requesting:
 - a hardship variation if you have not already requested one, or
 - postponement of enforcement proceedings by the lender (if the *National Credit Code* applies, you must do this before the end of the period specified in the default notice).
2. Lodge a complaint in writing, by email, online or by phone to AFCA. Let your lender know that you have done this.
3. 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 advice urgently. If a complaint is lodged with AFCA, there are limits on a lender's ability to take more steps in legal proceedings. See above under the heading *What if the lender does not agree to my request for a hardship variation?*

Except as indicated under the above heading, the lender should stay proceedings (that is, put proceedings on hold) if you inform them a dispute has been lodged.

Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral, or the Consumer Credit Legal Service on (08) 9221 7066 for advice and help. 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.

If you are served with court documents (for example, a 'complaint' or 'writ'), get legal advice urgently.

Credit reports

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

You have a right to get a copy of your credit report for free every 3 months. Your credit report also includes a credit rating. Some websites offer a credit rating. These are set out on the MoneySmart website: <https://moneysmart.gov.au/managing-debt/credit-scores-and-credit-reports>. By obtaining your free credit score you may be agreeing to allow your personal information to be disclosed to third parties for marketing purposes. You can opt out or unsubscribe where you do not want these details passed on.

Can I access my superannuation to help pay my debts?

While it is rare to get superannuation early, you may be able to access some of your superannuation on compassionate grounds to use to pay for mortgage arrears if your lender is threatening to repossess or sell your home. 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 Australian Taxation Office. You will need to meet certain requirements and have the necessary proof.

Some people on certain Centrelink payments can apply to get their superannuation early due to severe financial hardship. You can apply directly to your superannuation fund for early release. The role of Services Australia (Cth) is to respond to requests for confirmation of your income support payment status. It has no involvement in determining financial hardship or deciding if superannuation benefits are to be released.

Go to the Australian Taxation Office website at: <https://www.ato.gov.au/individuals/super/withdrawing-and-using-your-super/early-access-to-super/> for information on early release because of severe financial hardship.

A financial counsellor can help you with your application.

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?

- The Department of Communities on 1800 032 965 can help individuals and families. Visit the website for more information: <https://www.wa.gov.au/organisation/departments-of-communities/disaster-and-emergency-support-services>.
- Australian and/or State Government assistance may be available if the impact of the bushfires/floods/storm meets the criteria to be declared an “eligible disaster” for Disaster Recovery Funding Arrangements. You may be able to get more information from the [Department of Fire and Emergency Services’ website](https://www.dfes.wa.gov.au/department-of-fire-and-emergency-services) under Disaster Recovery Funding Arrangements WA at: [Recovery \(DRFAWA\) \(dfes.wa.gov.au\)](https://www.dfes.wa.gov.au/recovery). If you need help in deciding if you qualify for any assistance, email drfawa@dfes.wa.gov.au or phone the numbers provided on the website.
- Contact Legal Aid WA’s Infoline on 1300 650 579 for information and referral. Other information sheets dealing with the effects of natural disaster are available.
- To find your nearest financial counsellor visit the Financial Counsellors Association of WA website at: <https://fcawa.org/find-a-financial-counsellor/>.
- Contact AFCA on 1800 931 678 for help and information on financial hardship, insurance claims and other financial issues experienced as a result of natural disasters and to help resolve a complaint about your insurance company. Make sure you tell AFCA that you are a disaster-affected customer when you make your complaint. A dispute can also be lodged online at: <https://www.afca.org.au/make-a-complaint/>.
- If you are having trouble paying your utilities bills (gas, water, or electricity) due to financial hardship, you may be able to get help from the WA Government Hardship Utilities Grant Scheme (HUGS). See the Department of Communities website at: <https://www.wa.gov.au/service/community-services/community-support/hardship-utility-grant-scheme#:~:text=The%20Hardship%20Utility%20Grant%20Scheme,to%20pay%20their%20utility%20bills.&text=Customers%20may%20be%20eligible%20for,hardship%20strategies%20have%20been%20exhausted>.
- Services Australia (Cth) website has information about help available for those directly affected in natural disasters such as bushfires, including details of assistance provided and eligibility requirements: <https://www.servicesaustralia.gov.au/natural-disaster>.
- For legal advice on credit related issues, contact the Consumer Credit Legal Service WA on (08) 9221 7066, Monday to Friday, 9.00am to 4.00pm or visit its website at: <https://cclswa.org.au/>.
- For counselling and support seven days, 24 hours a day, contact LifeLine WA on 131 114 or Beyond Blue on 1300 224 636.
- National Debt Helpline on 1800 007 007 is a free confidential service for those with financial problems and queries.

- First Nations people can call the free [Mob Strong Debt Helpline](#) on 1800 808 488. The national helpline is open Monday to Friday 9:30am to 4:30pm.
- Visit the [Fair Work Ombudsman \(FWO\) website](#) or contact the FWO on 131 394 for information on employment entitlements during natural disasters. A fact sheet on this can be downloaded at: <https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/employment-conditions-during-natural-disasters-and-emergencies>.
- The Australian Securities and Investments Commission's MoneySmart website at: <https://moneysmart.gov.au/dealing-with-natural-disasters> has hints on what to do if your home has been damaged or destroyed by a natural disaster.
- On tax issues in dealing with disasters visit the Australian Taxation Office website at: <https://www.ato.gov.au/general/support-in-difficult-times/natural-disaster-support/>.

LEGAL AID WA OFFICES



Infoline: 1300 650 579
Legal Yarn: 1800 319 803
(for First Nations callers)



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office

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

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

West Kimberley Office

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

Great Southern Office

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

Goldfields Office

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

East Kimberley Office

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

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Pilbara Office

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

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

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