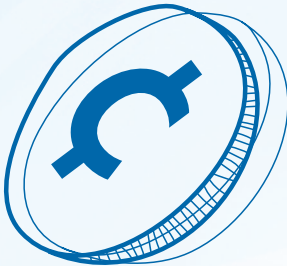


January 2013

► Debt problems

The law, your options



This booklet is for people who owe money. It is about what can happen if you do not repay it.

 **Victoria
Legal Aid**

Lawyers And
Legal Services

Do you need this booklet in a different format?

Please ring us on 9269 0223 so we can talk with you about what you need.

Produced by Victoria Legal Aid

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First edition 2004

Fourth edition 2013

Acknowledgments: Based on the publication *Falling on hard times*, which was created with input from the Financial and Consumer Rights Council. This new debt publication has been created with the assistance of the Debt Recovery Working Group of the Financial and Consumer Rights Council, the Consumer Action Law Centre and Eastern Access Community Health, with thanks to everyone who has provided information and their insight, especially financial counsellors.

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The law changes all the time. To check for changes you can:

- call Victoria Legal Aid's Legal Help phone line on 9269 0120 or 1800 677 402 (country callers)
- visit Victoria Legal Aid's website at www.legalaid.vic.gov.au
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

ISBN: 978 1 921949 03 6

Printed on recycled paper consisting of 60% post consumer waste and 40% certified fibre from controlled wood sources.

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Victoria Legal Aid

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health and debt.

Call our Legal Help phone line to find out how we can help you on 9269 0120 or 1800 677 402 (country callers).

About this booklet

This booklet is for people who have a debt. It is about what can happen if you do not pay money you owe. You may have to deal with people who are trying to get money from you, and you may have to go to court. This booklet explains your options and where you can get help.

Not all types of debt will be covered. We will focus on debts you have from borrowing money and from buying goods on credit and then being unable to pay them off.

This booklet only looks at debts that are:

- up to \$100,000
- dealt with under the National Credit Code, in the Magistrates' Court of Victoria, or the Victorian Civil and Administrative Tribunal (VCAT).

It does not cover:

- debts over \$100,000
- Victorian County or Supreme Court procedures
- debt recovery action from other states or territories.

Getting more help

For more information and advice on debt contact Victoria Legal Aid or the Consumer Action Law Centre. Contact MoneyHelp for free telephone financial counselling or Consumer Affairs Victoria to find a financial counsellor close to you. If you need help with a Centrelink debt contact Victoria Legal Aid or the Welfare Rights Unit. If you have a tax debt you may need to speak to an accountant, but seek help from a free financial counsellor first.

Go to the back of this booklet, at page 29, to a section called 'Where to get help' for contact details for services that can help you with legal advice and other support.

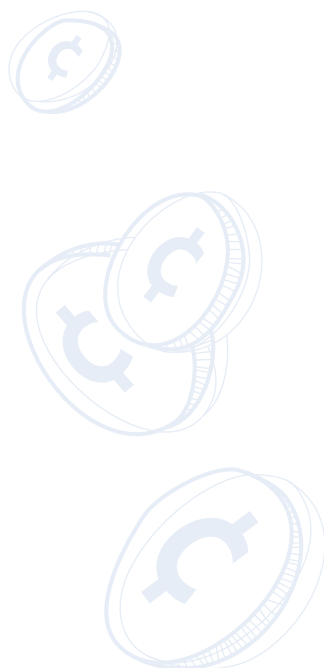
If you do not understand English and have to go to court, the court can get an interpreter to help you.

Human Rights Charter

You have rights, freedoms and responsibilities under Victoria's Charter of Human Rights. For more information about the charter contact the Victorian Equal Opportunity and Human Rights Commission. See 'Where to get help' on page 29.

Legal words

To help you, we have explained some words in 'What do these legal words mean?' at the front of this booklet. These words are highlighted in **bold** the first time they appear in each section.



What do these legal words mean?

Court officials, lawyers and financial counsellors use legal words when they talk. Some of these legal words are also used in this booklet. This is what they mean:

affidavit – a written and sworn document containing evidence for the court

assets – things you own, such as property, land, bank deposits, jewellery, a car

bankruptcy – a legal process that gives you a legal right to protection from your creditors

claim – this is the amount the creditor says you owe

Complaint Form 5A – court form used to start court action to get you to pay the debt

contract – an agreement that the law will usually make you keep

co-borrower – when more than one person signs a contract agreeing that they owe money. Co-borrowers are usually equally responsible for all of the debt

court order – a court document that says you must do something

creditor – the person or organisation that has money owed to them

credit record – your 'credit report' sets out your credit history and debt repayment record, such as defaults. Creditors use this to work out whether to lend you money

debt collector – a person or organisation which helps the creditor to collect debt or has bought the debt

debtor – person or organisation who owes money

defence – the legal reasons you give to argue against the claim to say why you should not have to pay

enforcement order – an order made by a court, often to ensure repayment of money owed

evidence – information used in court to prove something

file – to take a document to court to have it stamped

financial counsellor – a counsellor who gives information and options to support people with debt and credit problems free of charge

financial service provider – a bank, finance company or other lender

guarantee – a promise given by a person (the guarantor) to pay your debt if you do not pay it

hardship – difficulty. For example, where paying back a debt would mean you could not afford to pay for basic things that you need like food or transport

▶ Debt problems

The law, your options

hearing – the presentation of a case at court

judgment – a decision by a court, a court order

judgment proof – where the creditor cannot get money from you, because your income or assets are protected

liabilities – what you owe, or have a responsibility to pay, for example child support

mediation – where an independent person sits down with each person involved in a dispute to try to work out an agreement

mental capacity – the ability to make decisions

Notice of Defence Form 8A – a Magistrates' Court form that you fill in so you can argue against the creditor's claim, or complaint

Notice of Discontinuance – a court form that says a person wants to withdraw their court action

ombudsman – an agency that investigates complaints and helps sort out disputes

Pre-hearing conference – a court meeting where a court official will try to see if the creditor and debtor can work out an agreement

repayment plan – also called an instalment plan. A plan to repay the debt, often by regular payments

repossession – where there is a court order, or where the creditor has security over the property and they take control of the property

security – like a mortgage. A creditor may only lend you money if you give them security, for example the right to sell your home if you cannot repay. This security will be described in your credit contract

serve – the legal delivery of a court document

sheriff – a person ordered by the court to seize and sell your property

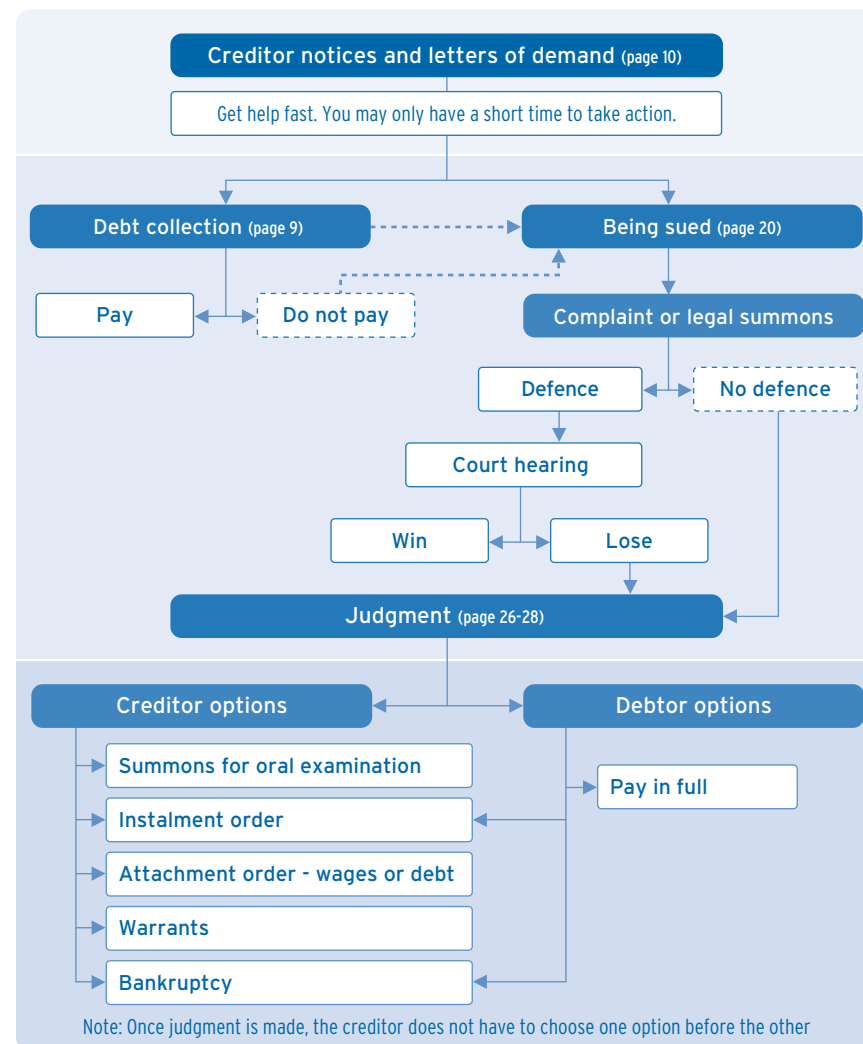
statute barred – when time limits that apply to court action being taken have expired. For example, for some debts there is a six-year time limit and if creditors take action later you can defend the action

trustee – a person who manages property held on trust for the benefit of another person

utility relief grant – a government grant to help you pay your current utility bills (such as electricity) if you are having a financial crisis

The big picture...you and debt

The creditor says you owe money. What options do you have?



Important things to keep in mind

- **Having a debt can be stressful.**
Think about what is best for you and your family and try to look after your health.
- **If you get a letter or form you do not understand, get help to find out what it means.**
Keep all your paperwork to do with your debt.
- **If you have wages or property, it is very important to get help as soon as possible.**
Free help is available.
- **Ignoring debts does not make them go away.**
You will have more options and feel better if you get help to sort them out. **Get help quickly to work out what you have to pay.**
- **You can get free advice from a financial counsellor.**
Financial counsellors are not allowed to charge you for their services and they must be members of the Victorian Financial and Consumer Rights Council (FCRC).
- **You have rights as to how debt collectors treat you.**
Debt collectors have a job to do but you should know your rights and be strong when dealing with them. Victoria has very strong laws against harassment.

See 'Where to get help'.

Your rights

The right to be treated fairly

You have a right not to be harassed or bullied when a creditor or debt collector contacts you. There are very strict laws with serious penalties for creditors who harass debtors, as well as guidelines on debt collector behaviour. Read more at www.consumeraction.org.au under 'factsheets' and www.accc.gov.au under 'managing debts' in 'for consumers'.

The law provides compensation for up to \$10 000 for debtors who have been distressed or humiliated. Debt collection guidelines cover why a debt collector can contact you, how and when. For example, they can only call between 7.30 am and 9.00 pm weekdays and between 9.00 am and 9.00 pm on weekends. If you disagree with the debt, the debt collector should not contact you until you and the creditor have sorted this out. Victorian law says that a debt collector cannot continue to contact you once you have told them in writing to stop any further contact, apart from a genuine warning of legal action and service of court documents.

If a debt collector contacts you, write down the:

- date
- time
- name of person who has contacted you
- name of the company they are calling from
- name of the company they are calling on behalf of (these may be different).

Try to always get something in writing from the debt collector – ask for a copy of any letter or papers about the debt. If there is a witness who sees the debt collector speaking to you, write down that person's name and contact details, too.

Do not agree to anything before you get some advice from a financial counsellor or legal service. Do not make a verbal agreement if you are unsure about any part of the debt or the person who has contacted you. Contact Victoria Police if you are physically threatened.

You can complain or take legal action and you can get help to do this. See 'Complaints' in 'Where to get help'.

It is important to send a copy of your complaint to the debt collector, the creditor and the dispute resolution scheme to which they belong (Financial Ombudsman Service (FOS) or Credit Ombudsman Service Limited (COSL). See 'How do I lodge a complaint with FOS or COSL?' at page 18).

The right not to be discriminated against

Discrimination happens when you are treated unfairly because of something about you, for example, your race, age or disability. If you think you have been discriminated against, contact the Victorian Equal Opportunity and Human Rights Commission.

The right to have your privacy protected

You have a right to privacy. The creditor can collect, store, use or give out information about you but they need to follow the rules set out in the *Privacy Act*. A creditor cannot contact anyone else about your debt unless they have your written permission.

If you think that your privacy has been breached, complain to the organisation that did it. You can also contact an ombudsman. For example, if it is an electricity company that breaches your privacy, then contact the Energy and Water Ombudsman. If it is a **financial services provider**, contact the Financial Ombudsman Service or Credit Ombudsman Service Limited. You can also contact the Privacy Commissioner.

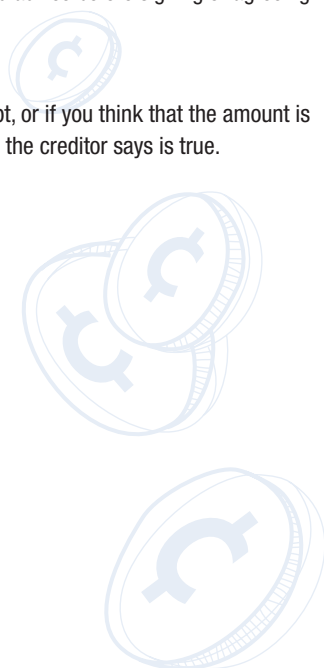
The right to get help

Financial counsellors and other services that deal with debt problems can help you. You may feel pressured to make a decision or to agree to something when a creditor or debt collector contacts you. You have a right to get financial or legal information and advice before signing or agreeing to anything.

The right to question the debt

You can question the debt if you do not believe it is your debt, or if you think that the amount is wrong. You can find out for yourself if you are not sure what the creditor says is true.

See also 'Reasons you might not have to pay', at page 14.



About debt

What is debt?

Debt is money that is owed to another person or organisation, for example, money you owe on a credit card. There are special words used for the people or organisations involved:

- a **debtor** is the person or organisation who owes money
- a **creditor** is the person or organisation who has money owed to them
- a **debt collector** either works for the creditor to collect debt or has bought the debt from the creditor (which means that the debt collector now owns the debt).

A creditor may say you owe money but there may be reasons why you do not have to pay all or some of the debt. Get help to work this out. See 'Reasons you might not have to pay'.

What are assets and liabilities?

Assets are things that you own. If you do not pay what you owe, a creditor may ask a court for an order to allow the **sheriff** to take (seize) and sell your assets. Some of your assets are protected and cannot be seized, for example, your fridge, washing machine, basic furniture and other necessary household items – unless there is a mortgage over these. **Liabilities** are amounts you owe or are responsible for paying, such as your telephone bill.

Is debt a crime?

No. It is not against the law to owe money, but the creditor may have legal rights to try to get this money back. The creditor has a right to ask for a **court order** that you pay the debt. The police are not involved, unless you ignore a court notice to go to court.

Why can the creditor sue me?

When you agree to buy something now and pay for it later, or to take out a loan, you make an agreement called a **contract**. It is between you and the person or organisation that you bought or borrowed from. It does not matter if you made the agreement in writing or just spoke about it.

A contract gives each of you legal protection. The creditor has a legal right to go to court to get back the money owing to them if you break your promise to make repayments.

If you can, sort it out before a court order is made against you. It gives you more options.

Work out where your debt is at

You have different options depending on whether a court order has been made that you owe the debt. There are different stages. Sometimes it can be hard to work out what stage your debt is at, especially if you owe money to different creditors. [See](#) also 'Reasons you may not have to pay'.

Demands for payment

At this stage, you might be getting reminder bills, letters or phone calls about your debt. Court action has not yet started.

If you borrowed a lot of money the creditor may have taken a mortgage ([security](#)) over goods, for example, a car. If you are behind in your payments, the creditor may be able to take the goods from you. This is called [repossession](#). There is a special process for this. Always get legal advice if you are threatened with repossession.

If you are having trouble paying you can try to negotiate with the creditor, to ask for more time, or to pay bit by bit, in instalments.

If the creditor refuses to negotiate and you are having trouble paying because of hardship (for example, if you are sick or have lost your job) you have more options. You may apply to the relevant ombudsman or a court for an order that will give you more time to pay or let you pay in instalments. Get legal advice to help you do this.

If you disagree with the debt you might be able to use a scheme that helps sort out disputes, such as an ombudsman. If your dispute is with a financial service provider, a complaint to the Financial Ombudsman Service (FOS) or Credit Ombudsman Service Limited (COSL) will stop any legal action starting. If legal action has just started, a complaint will stop it going any further until the dispute is sorted out. In some cases you will have other options such as going to the Victorian Civil and Administrative Tribunal (VCAT). [See](#) 'Reasons you might not have to pay'.

Notice of legal action - being sued

If your debt is overdue the creditor can sue you for the money. This means you will get letters and legal notices about going to court, like the one on the next page. Get legal advice quickly because you usually only have a short time to act. You **must** lodge a defence or complaint within 21 days from the date you received the court document (Complaint Form 5A) even if you wish to negotiate or claim hardship.

If you ignore the complaint an order will be made in your absence that you owe the money.

[See](#) 'Being sued', at page 20.

Court orders - judgment

To find out if an order has been made that you must pay your debt you can get a copy of your [credit record](#) or contact the Magistrates' Court.

Judgment means the creditor can take more action against you to get their money. This might include getting orders to take and sell your property (including your home) or to take money from your wages.

► **Get help so you can sort out your debts, especially if you have assets.**

► **Example of Complaint Form 5A**

MAGISTRATES' COURT GENERAL CIVIL PROCEDURE RULES 2010

Rule 5.02(1) FORM 5A

COMPLAINT

IN THE MAGISTRATES' COURT Court Number:
OF VICTORIA
AT

BETWEEN Plaintiff

OF

And Defendant

OF

Date of Document
Filed on behalf of:
Australian lawyer name: Code:
Address: Telephone:
Reference

- The address for service of the plaintiff is *(address must be within Victoria if the plaintiff sues in person)*:
- Name and address of the Australian lawyer for the plaintiff –
- The Plaintiff sues (or the defendant is sued) in the following representative capacity *(eg. As administrator of the estate of)*:

STATEMENT OF CLAIM
(Here set out in numbered consecutive paragraphs all the material facts relied on for the claim against the defendant including particulars of every fact or matter.
If the claim arises by or under any Act, identify the specific provisions relied on. State specifically the amount or other relief or remedy sought. State the place where and the date when the claim arose.
If the claim arises out of a motor vehicle collision and the claim includes a claim for the costs of repairs to the vehicle or total loss of the vehicle, an itemised quotation of the costs of the repairs or an assessment of the loss (whichever is relevant) must be attached to this complaint.

1.

1

TO THE DEFENDANT

TAKE NOTICE that this complaint has been brought against you by the plaintiff as set out in the statement of claim.

IF YOU INTEND TO DEFEND this complaint, YOU MUST GIVE NOTICE OF DEFENCE, **within 21 days of service upon you of this complaint, to –**

- the plaintiff; and
- the registrar of the Magistrates' Court of Victoria at
(insert proper venue)

IF YOU GIVE NOTICE OF DEFENCE, the Court will write to you and tell you of the hearing date

IF YOU DO NOT GIVE NOTICE OF DEFENCE WITHIN 21 DAYS OF SERVICE, the plaintiff may OBTAIN AN ORDER AGAINST YOU for the amount of claim and costs without further notice.

IF YOU PAY the amount of \$ and costs of \$ to the plaintiff or the plaintiff's Australian lawyer without giving notice of defence you may avoid further costs.

DATE OF FILING:

THIS COMPLAINT IS VALID IF IT BEARS THE ALLOCATED COURT NUMBER AND THE
DATE OF FILING

Dated:

*(To be signed by the Plaintiff
or the Plaintiff's Australian lawyer)*

2

Reasons you might not have to pay

You have a defence

You may disagree that you owe any money or you may have a defence to a debt, for example, you agreed to a contract but:

- you were told something that was not true (you were misled into signing)
- you were forced to sign or were taken advantage of (even by a family member)
- a law has been broken.

If you think you have a defence or you disagree with the debt get legal advice quickly. You only have a short time to act. [See](#) 'What is a defence?'.

You need to file a defence in court. You can get legal help to do this.

Consumer debts to financial service providers are dealt with under the National Credit Code and you can lodge a complaint with FOS or COSL to deal with them. In other cases, you might need to go to the Victorian Civil and Administrative Tribunal (VCAT) if you have a dispute. [See](#) 'Where to get help'.

You get a payment from Centrelink or Workcover

If your only income is from a Centrelink payment a court will not make you repay your debt from this income. It will make an order that you owe the money, but a creditor will be unable to get it from you. Workcover payments are usually protected too.

You might also be judgment proof. This is where your only income is a Centrelink or Workcover payment and:

- you do not own and are not buying a house
- you do not own any significant assets, for example, savings or expensive antiques. Basic household goods such as your fridge or washing machine are not significant assets
- you own one registered car worth less than \$7200. Note: this amount changes over time.

If your income is protected but you decide to apply for an instalment order at court to repay your debt, then the order may be made. [See](#) 'Court orders – judgment', at page 26.

It is an old debt

You may not have to pay an old debt if, for six years, you have not:

- made payments on the debt
- said in writing that you owe the debt
- had any court orders made against you.

This is called a statute barred debt. If you are not sure if your debt is statute barred get legal advice before you speak to your creditor or make repayments.

Note: the period is 15 years, not six years, where:

- the debt is secured by a mortgage over property
- there is already a court order to repay.

Where there are mortgages over property the law is complicated, so get help. You can find out if there is already a court order for you to repay. [See](#) 'Work out where your debt is at' at page 10.

If the creditor asks for you to pay an old debt, get help. They must prove that the debt is yours and less than six years old (or 15 years old in some cases, [see](#) above). If they cannot, and you have not agreed you owe the debt, and you have not started to pay it off, they cannot force you to pay.

If the debt is statute barred, then this is a defence if the creditor goes to court. [See](#) 'What should I do when I get a legal or court form?'.

You are or may become bankrupt

It is common for people to get into debt because they are trying to pay off too many things at once. Sometimes an offer of part-payment can work. Or, as the debts pile up, you might choose to become **bankrupt**.

Bankruptcy gives you a legal right to protection from your creditors. You hand over control for most of your debts and significant assets to a bankruptcy trustee and they will be sold. Not all debts will be cancelled by bankruptcy. Bankruptcy is a major decision so make sure you get advice about it. Contact a financial counsellor or the Insolvency and Trustee Service Australia.

[See](#) 'Where to get help' on page 29.

I am not sure if I have to pay. What do I do?

Know your rights before you do anything. If you are not sure then you can contact:

- Victoria Legal Aid Legal Help
- the Consumer Action Law Centre (for free legal advice and information about consumer credit and debt problems)
- MoneyHelp – a service supported by the Victorian Government offering free phone financial counselling service for Victorians, which can also refer you to a financial counsellor.

These are all free services that can help you work out what to do next, such as writing to the creditor, lodging a complaint with FOS or COSL or filing a defence. [See](#) 'Where to get help' on page 29.

If you do speak to a financial counsellor, make sure they are an accredited member of the Victorian Financial and Consumer Rights Council (FCRC) and they are not falsely advertising that they are financial counsellors and charging for their services. For more information [see](#) accreditation fact sheets on www.financialcounsellingaustralia.org.au

Once you know your rights, write to the creditor to say that either:

- you legally do not have to pay the debt (for example, if the debt is an old debt you may be statute barred) or
- they will not be able to get money from you (for example, if you are receiving payments from Centrelink or Workcover you may be judgment proof).

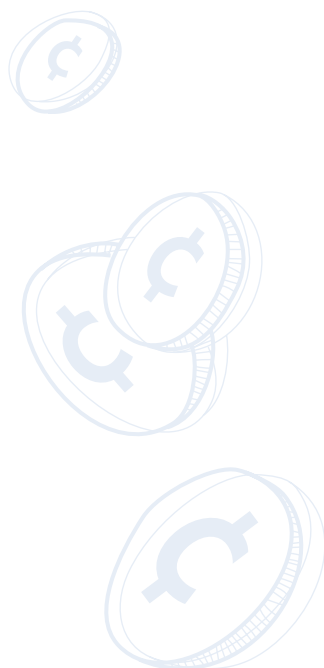
You need to be certain that your debt is statute barred or that you are judgment proof before you write to the creditor. If you are not sure, get help from a financial counsellor or one of the free services listed above.

The creditor may still start court action. If so get legal help. [See](#) 'Being sued'.

Is the debt gone forever?

Not always. If the debt is statute barred, or your bankruptcy period has passed, then it is probably gone.

Otherwise, if you get money in the future – for example, if you are on Centrelink payments now but get a job later – the creditor may be able to get back the money you owe them. Any remaining debt may get bigger because interest will be added, so the creditor may get back more money than you originally owed.



Your options before a court order or judgment

Can I pay less?

If you are having financial difficulty or hardship the government may help pay your current gas, water and electricity bills. Ring your utility company and ask if you can get a [utility relief grant](#).

Can I change the contract?

You may also be able to change a credit contract because of hardship or because the contract is harsh or unfair. Ask the creditor first. If they refuse you can lodge a complaint with FOS or COSL requesting that the creditor give you more time to pay or let you pay in instalments. You may need legal advice. [See](#) 'Where to get help'.

Also [see](#) 'Reasons you might not have to pay'.

Can I question the debt?

Creditors can make mistakes. You may need to talk with the creditor if you:

- agree that you owe the debt but do not agree with the amount
- are being asked to pay someone else's debt
- have already paid the debt (you may need to show proof)
- do not think the debt is yours at all.

► **If you disagree with a debt get legal advice fast to work out your options.**

Also [see](#) 'Reasons you may not have to pay'.

When you speak to the creditor:

- have pen and paper to write down what is said
- ask if they have a specialist hardship person you can talk to
- write down the name of the person you talk to
- always write down the date and what was said
- have all the details of your situation ready – for example, dates or payments made.

If you contact the creditor by email, make sure you keep a copy of any emails you send or receive.

Can I negotiate with the creditor?

You might agree that you owe the debt but cannot pay it off at once. Tell the creditor you are in hardship. You can try to negotiate with the creditor by asking them to wipe the debt or arranging to pay at a later date or in instalments.

Make sure that your **repayment plan** is realistic – do not commit to a plan if you think you might still have trouble paying. It is a good idea to get help from a financial counsellor or community legal centre to write a repayment or instalment plan. You can then give this to the creditor and ask them to consider it.

Your plan should set out repayments you can afford and you can ask for interest to be stopped.

Keep in mind that even if your plan is reasonable, your creditor can still say no. This is why it is worth asking for a hardship variation first. If the creditor does refuse, they may take action to get the money owed. You can apply to FOS or COSL for the repayment plan you want.

See 'Where to get help'.

How do I lodge a complaint with FOS or COSL?

If you have a problem with a financial service provider and you believe they have acted unfairly towards you, you should first try to resolve the issue with them directly by sending them a letter of complaint.

If the financial service provider does not respond to your complaint within 45 days, you can lodge a complaint with the Financial Ombudsman Service (FOS) or Credit Ombudsman Service Limited (COSL). These are independent dispute resolution services that can help you and the creditor come to an agreement about the debt without taking legal action.

To lodge a complaint, your financial service provider must be a member of FOS or COSL and you must have tried to resolve your issue with them first.

Visit www.fos.org.au and www.cosl.com.au to find out whether your financial service provider is a member, and for information on how to lodge a complaint. It is free to lodge a complaint.

What if I do nothing?

This can seem like the easiest option. However, if you ignore a debt, you will probably still get the calls and letters and eventually a court order against you, whether you owe the money or not. The debt is also likely to get bigger, with costs and interests added.

See 'Court orders – judgment'.

What if there is security for the debt?

If you cannot repay a debt the creditor will be able to repossess any goods used as security and sell them. Creditors usually get court orders first if the security is over property, such as your home. If your debt has not been fully paid off by the sale, you will still owe money. The creditor will then take other action to get the money.

What if there is a co-borrower or guarantor?

In some cases, the creditor will ask a **co-borrower** or **guarantor** to pay all or some of your debt. A co-borrower is someone who has borrowed the money with you and agrees to be equally responsible for the debt. A guarantor is someone who has said on the contract that they will pay your debt if you cannot.

If you cannot pay, the co-borrower or guarantor may have to pay, or can lose assets.

What if I used my home as security?

You may have borrowed money to buy a house, or used your house as security for other loans. If you cannot pay back this money the creditor can sell your home. Any other creditor who has judgment against you can sell your home.

If your home is at risk get help fast.

There are some things you can do that may help:

- talk to the creditor and explain your situation. The creditor may agree to a repayment plan.
- ask the creditor in writing for a hardship variation. If they refuse, you may be able to apply to have your payments reduced or suspended for a short time. Get legal advice or see a financial counsellor to help you do this.
- contact the Office of Housing. They may offer short-term help if you are having trouble paying off your mortgage.
- talk to a financial counsellor about options for mortgage repayments.
- contact your superannuation scheme to ask about hardship release of funds to cover overdue payments.

► **Remember, your home is at risk with any debt that you cannot pay.**

See 'Where to get help', at page 29.

Being sued

What does it mean to be sued?

This is when the creditor takes court action against you. The court can make an order that you owe the debt. The debt is then called a judgment debt. You will have to pay:

- the debt
- the creditor's legal costs
- interest on the debt.

This gives a creditor options to get the money back, for example, the creditor can apply to the court to have money taken from your wages or to take and sell things you own, including your home.

Being sued can end up costing you much more money than your original debt.

What is a letter of demand?

A letter of demand asks you to pay the debt and tells you that the creditor will sue if you do not pay. If the creditor decides to sue you, usually the first thing they will do is send you a letter of demand.

Creditors generally send a letter of demand to your last known address. If you move you do not have to tell creditors your new address, but if you do not then court or other action may be taken against you and orders made without you knowing.

Some creditors try to make their letters look like official court documents to make you think court action has started. This is illegal. Get legal help if you are not sure if you have a letter of demand or a court document, as you may have to act quickly.

What do the legal or court forms look like?

In the Magistrates' Court, creditors start court action by filing a Complaint Form 5A (see the example on page 12). At other courts the forms can have a different name or look and may have different time limits. You will be sent a copy of the form. Court orders cannot be made against you unless a Complaint Form 5A has been delivered to you.

The complaint will say how much money the creditor wants from you. This is the claim. The complaint will also say you need to file a defence within 21 days or risk having a court order made against you.

How will I get the court forms?

A complaint will be delivered (served) by an authorised person working for the creditor. The complaint can be delivered to you almost anywhere, for example, at home or work. You do not have to be there to be officially served. The complaint can be given to someone else at your home or work as long as they are over 16 years old.

What should I do when I get a legal or court form?

► Do not ignore the form

If you ignore these forms, you will lose important rights. Read the complaint carefully.

Get legal advice

Contact the Victoria Legal Aid Legal Help service, Consumer Action Law Centre or a local community legal centre immediately to work out your options. If the creditor is a **financial service provider**, lodge a complaint with FOS or COSL immediately.

You may have a defence but you need to act fast. See 'Where to get help'.

What is a defence?

There may be legal reasons why you do not have to pay some or all of the debt. This is called a defence. For example, you may have a defence to the claim if:

- the creditor acted unconscionably (unfairly)
- when you agreed to the credit contract you could not afford to repay and the creditor knew this
- the contract has unfair terms
- you are not named in the loan contract or the **guarantee**
- you are under 18 or were under 18 when the debt was made
- you did not have the **mental capacity** to agree to a contract when the debt was made and the creditor knew or should have known this at the time
- you felt you had no choice but to sign, for example, you were threatened
- the amount the creditor says you owe is wrong (**note**: this is not a complete defence. If you owe the creditor money, you will still have to repay it)
- court action against you started outside the time limit for the creditor to act.

► You only have a short time to file a defence or lodge a complaint with FOS or COSL. Check the complaint form.

In the Magistrates' Court you have 21 days to file a defence, in other courts you may have less time.

► **Example Notice of Defence Form 8A (page 2)**

Notes

1. A defence
 - (a) must state which of the facts in the statement of claim are admitted, denied or not admitted – see Rule 13.02(1).
 - (b) if the proceeding is referred to arbitration, must state with particularity the date, place, circumstances, facts or other matters relied on in defence of the claim.
2. A defendant who in the defence does not state whether a fact stated in the statement of claim is admitted, denied or not admitted, will be taken to admit the fact – see Rule 13.02(2)
3. A defendant who states that a fact stated in the statement of claim is denied must –
 - a) Give reason for denying the fact; and
 - b) If the defendant intends to prove a fact different from that stated in the statement of claim, state with necessary particulars the fact that the defendant intends to prove – see Rule 13.02(3)
4. Save with the leave of the Court, a defendant who states that a fact stated in the statement of claim is not admitted must not except in cross-examination adduce any evidence with respect to that fact at the hearing of the proceeding – see Rule 13.02(4)
5. The defendant must state specifically with particulars any fact or matter which –
 - a) makes the claim of the plaintiff not maintainable; or
 - b) if not stated specifically, might take the plaintiff by surprise; or
 - c) raise questions of fact not arising out of the statement of claim – see Rule 13.02(5)
6. If the defence arises by or under any Act, the defence must identify the specific provision relied on – see Rule 13.02(6)

FILED:
(Date of filing)

(To be signed by the Defendant or the
Defendant's Australian lawyer)

1. **This notice was signed -**
 - * by the defendant in person;
 - * for the defendant corporation by (name of person)
of (address)
who holds the position of
(director, secretary or other person authorised in writing by the defendant corporation)
 - * for the defendant by
Australian lawyer, of
(business address of Australian lawyer)
2. **The address of the defendant is –**
3. **The address for service of the defendant is –**
(If the defendant defends by an Australian lawyer, the business address of the Australian lawyer.
If the defendant defends in person, the address in 2).

* Delete if not applicable

2

What happens after I file a defence?

The court will usually set a time for a pre-hearing conference or mediation. After this, if you and the creditor cannot agree on how to resolve the case you will be given a date for a final **hearing**.

The court will write to you telling you the date and time of the hearing. Get legal advice before going to court.

Going to court can be very stressful. You may be able to get a lawyer to speak for you in court. You can contact Victoria Legal Aid or the Consumer Action Legal Centre for advice. It can help if someone comes with you, for support. If you have a financial counsellor they may be able to come with you too.

Note: claims under \$10,000 may be sent directly to arbitration, a special kind of hearing. A decision is made by the court after it hears the evidence the creditor has against you and the evidence you have in your defence.

What happens if I do not file a defence?

If you do not file a defence the court will make a decision without you, and an order against you.

Can I still pay the debt off?

Yes, you can still pay the debt off after you have received a complaint. The creditor will probably also want you to pay their legal costs. You will need to negotiate with the creditor about how you will pay. Once this is done, make a written agreement with the creditor. Do this before any actual court hearing begins. Make sure the creditor files a Notice of Discontinuance with the court. This will stop the court action against you.

What if I ignore the legal or court forms and do nothing?

The creditor will apply to the court to have a court order made against you.

There will be a record of the court order but you will not be told about it. If you want to find out about the order or get a copy you can contact the court where the Complaint Form 5A was issued.

The creditor will then have several options to try to get the debt paid back.

See 'What sort of court orders can be made?', in the next section.

► **You may not want to go to court, but you can get help to work out your options before you decide.**

Court orders – judgment

What sort of court orders can be made?

The court will make orders if it agrees you owe a debt, even if you do not go to court. Once the court has made an order against you, your debt plus interest and legal and court costs becomes a judgment debt. A creditor has at least 15 years to take action on a judgment debt.

This judgment gives the creditor the right to apply to the court for the following enforcement orders, which are orders to make you pay:

► Summons for oral examination

This court order means you have to go to court to be interviewed by a court official. If you do not go, the court will issue a warrant for the police to make sure you come to the next hearing. The court official will ask you questions about your income, expenses, assets and liabilities.

This is a very common court order. The creditor usually asks for this order so they know exactly what you earn and own so they know what they can get from you and how best to get it.

► Instalment order

This court order means you have to pay the debt bit by bit, in instalments. Either you or the creditor can apply for an instalment order. If you wish to apply, get Form 61A and 61B from the court, fill them in and file them.

The court will not make an order if you really cannot afford to pay the amount within a reasonable time. You can get help before you apply for an instalment order to work out if this is the best option for you. Once there is an instalment order, and you comply with it, the creditor cannot take any further enforcement action.

► Attachment of earnings

This court order tells your employer to pay an amount out of your wages to your creditor. Currently, in Victoria no more than 20 percent of your pay, after tax, can be taken out. Remember, if your only income is from Centrelink you cannot be made to pay.

► Attachment of debt

This court order tells a person who owes you money to pay that money directly to your creditor. An attachment of debt can be made against that person's bank account.

► Warrants of seizure and sale

A warrant is a court order telling the sheriff to do something. The sheriff may take your possessions and sell them for a creditor. Some things cannot be taken.

There are different types of warrants. A warrant to seize property orders the sheriff to go to your home or business (if you own the business) and take items to sell. They may take valuable things that you own outright, for example, your car. If you have a registered car it will not be seized if it is worth less than \$7200, or if the amount you own of it is less than \$7200.

Note: this amount changes over time. If your car is not registered, it can be seized regardless of how much it is worth.

You can keep household goods that help you live in basic comfort, for example, your fridge, television, washing machine, basic furniture, some personal jewellery, clothing and some tools you use to earn an income. See www.itsa.gov.au under 'Debtors' and 'Personal insolvency information' for a list of things that can be taken.

The sheriff has the power to enter your house using reasonable force. The sheriff might take the goods, or just make a list of what is seized. Either way you lose control of them. After the sheriff takes your goods away, they will sell them. If you can pay, you can still try to negotiate with the creditor to stop the sheriff from selling the goods.

Get legal advice fast if you have a warrant against you.

► Warrant to sell your house

Any creditor who has sued you successfully can ask the court for an order to sell your house. If your home is at risk get legal advice fast.

► Creditor's petition for bankruptcy (sequestration order)

A creditor can ask for a court order (petition) for your bankruptcy. If the order is made a bankruptcy trustee gets control of your debts and assets. The trustee has to work out if, and how much, your creditors can be paid.

Creditors will probably take this action if they believe you have valuable things or that you are avoiding a debt you can pay. Speak to a financial counsellor or get legal advice and more information about bankruptcy. There are good reasons for you to apply for bankruptcy first, the main one being the very high cost to you of a private trustee.

Do I have any options once an order is made?

You still have options. You can negotiate to pay the debt, ask the court for instalment orders, or apply for bankruptcy yourself if the creditor is threatening this. You can get help to do any of these.

Can I get a court order reversed?

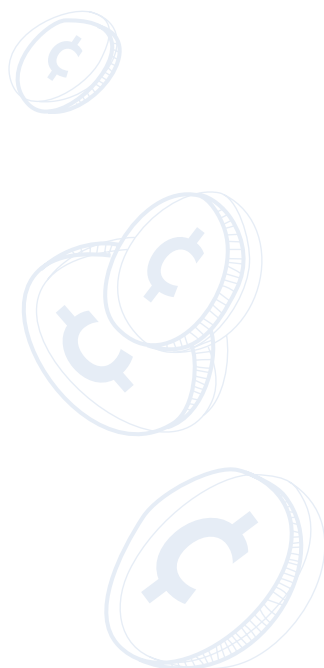
To reverse a court order you will need to ask for a re-hearing. This process can be expensive. It is very important that you get legal advice before asking for a re-hearing. You must fill in the re-hearing court form and:

- write a sworn statement (affidavit) that shows that you have a defence
- explain in the affidavit why you did not enter a defence or go to court, and why it has taken you until now to apply to the court
- show that the creditor will not be worse off by having the first court order cancelled.

Unless the creditor was at fault you will have to pay the creditor's legal costs.

You might also be able to appeal against the decision. This is rare. You would need to show that the first court made a mistake in applying the law. Get legal help about this. It is likely to be complicated and will be expensive.

See 'Where to get help'.



Where to get help



If you need an interpreter:

Call the Translating and Interpreting Service for an interpreter to help you speak to any of the agencies in this section. Ask the interpreter to put you through to the agency you need. This is usually free.

Tel: 131 450



If you are deaf or have a hearing or speech impairment:

Use the National Relay Service to phone any of the agencies in this section. This is free. For more information about the NRS visit www.relayservice.com.au

TTY users: Call 133 677 and then ask for the phone number you need. Include the area code.

Speak and Listen users: Call 1300 555 727 and then ask for the phone number you need. Include the area code.

Internet relay users: See www.relayservice.com.au and click 'Make an internet relay call'.

Victoria Legal Aid

Legal Help

Tel: 9269 0120 or 1800 677 402 (country callers)

Arabic	9269 0127	Polish	9269 0228
Croatian	9269 0164	Serbian	9269 0332
Greek	9269 0167	Ukrainian	9269 0390
Italian	9269 0202		

Monday to Friday between 8.45 am and 5.15 pm

You can also get an interpreter from the Translating and Interpreting Service if you speak another language. Call 13 14 50 and ask to be put through to Victoria Legal Aid.

Local offices

We have offices all over Victoria. See the back cover for office locations and phone numbers.

Website

www.legalaid.vic.gov.au

► Debt problems

The law, your options

Consumer Action Law Centre

For free legal advice and information about consumer credit and debt problems

Tel: 1300 881 020 or 9629 6300

Email: legal queries to advice@consumeraction.org.au

Federation of Community Legal Centres

Call to find out your nearest community legal centre

Tel: 9652 1500

www.communitylaw.org.au

Consumer Affairs Victoria

For free information about dealing with debt

Tel: 1300 558 181

Email: consumer@justice.vic.gov.au

www.consumer.vic.gov.au

Welfare Rights Unit

For free legal advice and information about Centrelink debt

Tel: 9416 1111 or for country callers 1800 094 164 (only outside Melbourne and Geelong metro)

Email: wru@welfarerights.org.au

www.welfarerights.org.au

Financial counsellors

Consumer Affairs Victoria

Call to find out your nearest financial counselling service

Tel: 1300 558 181

Financial and Consumer Rights Council

Visit the online Counsellor Directory to find a counsellor

www.fcrc.org.au

MoneyHelp

Free phone financial counselling service for Victorians

Tel: 1800 007 007

Dispute resolution – ombudsman

If you disagree with your debt, these services can help you sort out your dispute with the creditor. These are some of the different services:

Financial Ombudsman Service (FOS)

Tel: 1300 780 808

www.fos.org.au

Credit Ombudsman Service Limited (COSL)

Tel: 1800 138 422

www.cosl.com.au

Telecommunications Industry Ombudsman

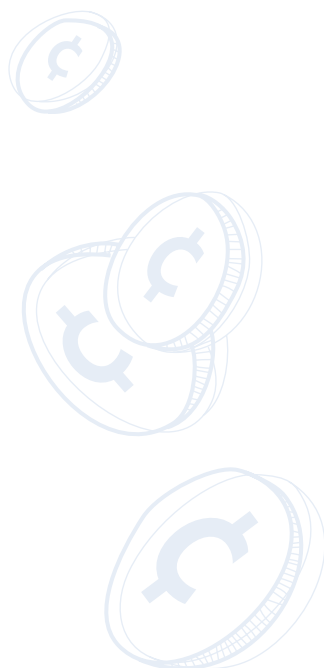
Tel: 1800 062 058

www.tio.com.au

Energy and Water Ombudsman (Victoria)

Tel: 1800 500 509

www.ewov.com.au



Complaints

Consumer Affairs Victoria

For consumer disputes and complaints against debt collectors [see](#) details above

Australian Consumer and Competition Commission

For complaints against debt collectors – general goods and services

Tel: 1300 302 502

www.accc.gov.au

Australian Securities and Investment Commission

For complaints against debt collectors – financial services

Tel: 1300 300 630

Email: infoline@asic.gov.au

Privacy Victoria

For complaints about breaches of privacy

Tel: 1300 666 444

Email: enquiries@privacy.vic.gov.au

www.privacy.vic.gov.au

Privacy Commissioner (federal)

For complaints about breaches of privacy

Tel: 1300 363 992

Email: privacy@privacy.gov.au

www.privacy.gov.au

Victoria Police

Call if you are physically assaulted or threatened

Tel: 000

Victorian Equal Opportunity and Human Rights Commission

For complaints about discrimination

Tel: 1300 292 153

Email: information@vhreoc.vic.gov.au

www.humanrightscommission.vic.gov.au

Other useful contacts

Guidelines for debt collection

www.advance-merc.com.au/docs/debtcollectionguidelinesvic.pdf

Insolvency and Trustee Service Australia

For information about bankruptcy

Tel: 1300 364 785

www.itsa.gov.au

Magistrates' Court of Victoria

For debt claims under \$100,000. You can find out if a court order has been made against you.

Tel: 9628 7718 for Melbourne, or call your nearest court

www.magistratescourt.vic.gov.au

MoneyHelp website

For tools and advice for managing money, job loss and debt

www.moneyhelp.org.au

MoneySmart website

For information about debt and dealing with debt collectors

www.moneysmart.gov.au

Office of Housing

Mortgage relief scheme, for short-term help

Tel: 1800 134 872

www.housing.vic.gov.au

Victorian Civil and Administrative Tribunal (VCAT)

For most consumer and trader disputes

Tel: 9628 9790

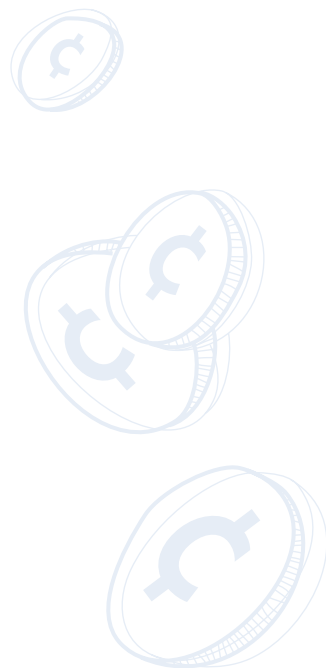
Email: vcat@vcat.vic.gov.au

www.vcat.vic.gov.au



► Debt problems

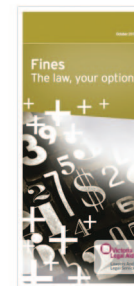
The law, your options



Useful Victoria Legal Aid resources

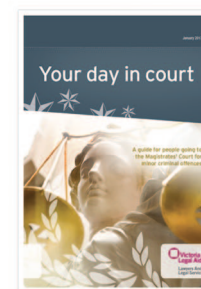
Victoria Legal Aid has free booklets with legal information on topics such as dealing with family violence, family law and going to court.

Visit www.legalaid.vic.gov.au to order or download booklets or call 9269 0223 to find out more.



Fines

This booklet is for anyone who has been fined in Victoria. It gives you options for dealing with your fines.



Your day in court

This booklet is for anyone who has to go to the Magistrates' Court because they have been charged with a criminal offence.



Disagree with a Centrelink decision?

Watch me on **You Tube**

Watch our community legal education videos.

► Debt problems

The law, your options

Victoria Legal Aid

Legal Help

Tel: 9269 0120

Country callers: 1800 677 402

Offices

MELBOURNE

350 Queen St

Melbourne VIC 3000

Tel: 9269 0120

Country callers: 1800 677 402

Suburban offices

BROADMEADOWS

North western suburbs

Level 1, Building 1

Broadmeadows Station Centre

1100 Pascoe Vale Rd

Broadmeadows VIC 3047

Tel: 9302 8777

DANDENONG

Westernport region

Level 1, 9-15 Pultney St

Dandenong VIC 3175

Tel: 9767 7111

FRANKSTON

Peninsula region

Cnr O'Grady Ave & Dandenong Rd

Frankston VIC 3199

Tel: 9784 5222

PRESTON

North eastern suburbs

42 Mary St

Preston VIC 3072

Tel: 9416 6444

RINGWOOD

Outer eastern suburbs

23 Ringwood St

Ringwood VIC 3134

Tel: 9259 5444

SUNSHINE

Western suburbs

1/474 Ballarat Rd

Sunshine VIC 3020

Tel: 9300 5333

Regional offices

BALLARAT

Central Highlands region

Area A, Level 1

75 Victoria St

Ballarat VIC 3350

Tel: 5329 6222

Toll free: 1800 081 719

BENDIGO

Loddon—Campaspe region

424 Hargreaves St

Bendigo VIC 3550

Tel: 5448 2333

Toll free: 1800 254 500

GEELONG

Barwon region

Level 2, 199 Moorabool St

Geelong VIC 3220

Tel: 5226 5666

Toll free: 1800 196 200

HORSHAM

Wimmera region

29 Darlot St

Horsham VIC 3400

Tel: 5381 6000

Toll free: 1800 177 638

MORWELL

Gippsland region

Cnr Chapel & George St

Morwell VIC 3840

Tel: 5134 8055

BAIRNSDALE

Gippsland region (branch office)

101A Main St

Bairnsdale VIC 3875

Tel: 5153 1975

SHEPPARTON

Goulburn region

36-42 High St

Shepparton VIC 3630

Tel: 5823 6200

Toll free: 1800 119 918

WARRNAMBOOL

South Coast region

185 Fairy St

Warrnambool VIC 3280

Tel: 5559 7222

Toll free: 1800 651 022



Publication orders

To download or order our publications in English or other languages go to www.legalaid.vic.gov.au

If you need help ordering online please call Victoria Legal Aid on 9269 0223