

Dealing with debts: your rights and responsibilities

This information is from page 15, 16 and 17 of the ASIC/ACCC brochure

Are you being taken to court?

Creditors have the right to start legal proceedings to recover money – in other words, they can sue you for a debt. If they do, these legal proceedings will be civil rather than criminal, and will have nothing to do with the police or the possibility of jail.

If you receive notice that you are being taken to court (such as *a summons or statement of claim/liquidated claim*) you should act without delay. The action you decide to take will depend on whether or not you dispute the debt. In either case, you should get advice about your options as soon as possible.

If you are sure that you owe the amount claimed:

- Decide whether you can pay the amount in full. If you can, you should do so now.
- If you cannot pay the full amount think about applying, within any timeframe allowed, to pay by instalments. You can arrange this with the court staff.

If you dispute the debt because you do not owe the amount claimed, only owe part of the amount, or think you have a defence:

- Get legal advice immediately.
- If you have a defence against paying the debt, you will need to file documents with the court. You should get legal advice before doing this.

You must act immediately to file the necessary documents in the correct way and within the necessary timeframes. If you don't, a judgment will generally be entered against you.

What is a defence?

A defence is a legal reason why a debt cannot be enforced by a court.

For example, there are laws that stop debts being collected through the courts after a certain period of time: see below, What about old or 'statute-barred' debts?

Remember: You might still be able to negotiate a repayment plan, even if a court order has been made against you.

What about old or 'statute-barred' debts?

You may have a defence against a debt if:

- a long period of time has passed since you last made a payment or confirmed the debt, and
- no court action has been taken to recover the debt in the meantime.

Generally, you can rely on this defence if 6 years have passed since you last made a payment or confirmed the debt, and there is no court judgment against you. In the Northern Territory, the time period is 3 years.

If this is the case, recovery of the debt through the courts is said to be 'statute-barred' and the courts will not enforce the debt.

If there is no court judgment against you and you make another payment, the clock will usually start again and normally you will not be able to rely on this defence anymore.

If you think a debt collector is contacting you about a debt that is 'statute-barred', you should get legal advice before you make any payment or confirm the debt in any other way.

Your legal rights and protections

Debt collectors must act within the law when recovering debts. This means they must obey laws that are designed to protect you from misconduct. Under these laws, a debt collector must not:

- use physical force or coercion (forcing or compelling you to do something),
- harass or hassle you to an unreasonable extent,
- mislead or deceive you (or try to do so),
- take unfair advantage of any vulnerability, disability or other similar circumstance affecting you (this is known as 'unconscionable conduct').

These laws also apply to a debt collector's conduct towards your spouse, partner, family member or other person connected with you. Other laws also apply to debt collection.

Remember: While you should not accept misconduct by a debt collector, such misconduct will not affect whether you are liable for the debt